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P A R T I.
P R I N C I P L E S
O F
LAW AND GOVERNMENT.

—Of right and wrong he taught.

ARMSTRONG.

PRINCIPLES
OF
LAW AND GOVERNMENT

WITH AN INQUIRY INTO THE
JUSTICE AND POLICY
OF THE
PRESENT WAR,
AND MOST EFFECTUAL MEANS OF OBTAINING

AN HONOURABLE, PERMANENT, AND ADVANTAGEOUS

PEACE.

SALUS POPULI SUPREMA LEX.

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PRINCIPLES

LAW AND GOVERNMENT

BY JOHN F. MORTON

IN TWO VOLUMES

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C O N T E N T S.

	Page
<i>INTRODUCTION</i> - -	i

P A R T I.

PRINCIPLES of LAW and GOVERNMENT.

S E C T I O N I.

<i>Of the Origin of Law and Government</i> -	13
--	----

S E C T I O N II.

<i>Of Government and Law in general</i> - -	40
---	----

S E C T I O N III.

<i>Of different Forms of Government</i> - -	78
---	----

S E C T I O N IV.

<i>Of Deviations from the true Principles, and of the Dissolution of Law and Government</i> -	181
---	-----

P A R T

P A R T II.

*An Inquiry into the Justice and Policy of the present War,
and most effectual Means of obtaining an honourable,
permanent, and advantageous Peace* - - - I

A P P E N D I X.

S E C T I O N I.

Of Criminal Justice - - - 101

S E C T I O N II.

Laws relative to Imprisonment - - - 121

E R R A T A.

Introduction page 3, line 8, *for* that *read* those.

Part I. page 18, line 20, *for* or, *read* nor.

Page 38, line 18, *for* the, *read* that.

Note pages 79, 80, 81, 83, 84, 85, 87, *for* book, *read* livre.

Page 144, line 19, *for* minion, *read* minions.

Part II. page 80, line 7, *for* adapted, *read* adopted.

Page 82, line 10, *for* renden, *read* render.

Appendix, page 101, line 6, *for* Lome, *read* Lolme.

There are many other errors, especially in the punctuation, which particular circumstances, have prevented the author from correcting, and from the great haste in which the work has been prepared, he is afraid he may have omitted—acknowledging the obligations he is under to some of the authors of whose works he has availed himself.



P A R T I.

INTRODUCTION.

AFTER what has been advanced by so many, and such able writers, with regard to law and government, it is not without much diffidence, that an obscure individual, unused, and probably little qualified for writing, lays his thoughts on these subjects before the public. If they furnish a single hint, that may in ought prove advantageous to his country, or beneficial to mankind; he could not easily have forgiven himself, if he had withheld it. If that hint is carried into effect, in a manner productive of such consequences, he will deem it an ample compensation, for any trouble or inconveniencies attending the writing, or that he may experience from the publication.

PART I.

B:

That:

That the system of law, adopted by this as well as by every other country, is far short of perfection, and defective in many respects, he imagines, will readily be admitted. The delay, expence, and uncertainty of the law, has been much complained of and generally regarded, as most oppressive grievances.

The justly-celebrated Abbè Reynal has observed, that law, often exhausts the very treasures it should preserve, and the very property, it should defend : and Swift has remarked, that he never heard a finer (and he seems to think, a juster) piece of satire, than that of astrologers ; when they pretend by rules of art, to tell when a lawsuit will end, and whether to the advantage of the plaintiff or defendant ; thus making the matter depend entirely on the influence of the stars, without the least regard to the merits of the cause.

When matters of science are not established on true and solid principles, opinion with regard to them must fluctuate, according to times and circumstances ; and the same person, on different occasions, will maintain with equal energy, the cause of truth or of falsehood ; support
with

with equal force of eloquence, doctrines repugnant, contradictory and subversive of each other ; indulge in vague and general declamation, according to the point of view, in which the matter strikes him at the time, and vary his opinion and principles, with every new combination of ideas : and if the opinions of the individual, in this case, are thus liable to fluctuation and uncertainty ; how discordant and various, must that of the public be ; even, at any given time.

That this observation is particularly applicable, to the sciences of law and government ; he appeals, to the doctrines of our best authors on these subjects, to the diversity of opinion, that prevails in our courts of law and among our legislators ; as well as among mankind in general ; and he imagines, that any attempts, to improve these most important sciences, however defective in execution, must in some degree be meritorious.

It must be confessed that the generality of mankind, from indolence or incapacity, are apt to be so much swayed by precedent and example, as to regard as perfect,

every legal regulation and form of government, to which they have been accustomed ; to imagine, that whatever is, is necessary ; and to be averse to innovations, however beneficial, either from being incapable, of perceiving the benefits which may result from them ; or too inert, to oppose the inconveniencies, with which they may be attended : while the vicious and interested, are ever ready to oppose any regulations, for restraining their vicious fraudulent practices, or diminishing the wages, of iniquity and corruption. How many acts of injustice ? How many inconsistencies ? have political casuists, the wicked and the venal, contrary to reason and nature, attempted to vindicate, on the general plea of necessity, or temporary expediency. How much has the state of society been improved, by schemes originally deemed chimerical and whose projectors have been regarded, as mad or foolish, by the blind and the obstinate ? and what violent oppositions, have been made to regulations, which have proved so highly beneficial, that their most determined opponents, have at length been eager to become
partakers,

partakers, of what their ignorance and pertinacy, had formerly rejected and strenuously opposed:

Nolumus leges Angliæ mutare—the famous answer of the barons, at the parliament of Merton, where the prelates endeavoured to substitute, the canon for the common law of England; and which has been so often quoted with impropriety, by those who have opposed new institutions, was proper and pertinent only in so far, as the proposed alteration was for the worse: for there certainly, could be no good reason assigned; why the laws of England might not be altered for the better; or that, like those of the Medes and the Persians; they should be declared immutable, unless incapable of such alteration.

Besides, institutions originally the most expedient and unexceptionable, from a change of circumstances, may become highly prejudicial; and as circumstances vary, law and policy should undoubtedly, accommodate themselves to such variations; as otherwise, many evils must unavoidably be experienced.

For

For want of solid reasons to support their objections, men of weak minds or interested views, are on all occasions ready to apply, certain aphorisms or general maxims ; as that innovations are dangerous, and that theory and practice do not always correspond : yet, there can certainly be no defect in practice if properly conducted, but what must proceed, from some omission or defect in the theory ; and innovations can be dangerous only, when not founded on reason, utility and justice ; or when introduced at an improper time, and without proper caution. Had this doctrine been admitted in its utmost extent, and always rigidly adhered to ; the situation of Britons, would at present have been more deplorable ; than that, in which Cæsar found them ; and little if at all superior, to the present condition of the Hotentot, the Esquimaux or Samoides.

It is likewise usual for the interested, to represent schemes and undertakings equally beneficial as laudable ; as the offspring of a distempered imagination, as wild, impracticable, illusive and chimerical ; as too refined and speculative, for being productive of any utility,

ty, however specious in appearance; and in this general manner, to plead the cause of prejudice, folly, vice, fraud and oppression; and aided by misrepresentation, by envy, jealousy and malice; the known characteristics of little vicious minds, to retard such schemes and undertakings, if not to render them entirely abortive.—To observe, that we ought to regard man as he is, not as he ought to be; that he was thus from the beginning, and will and must continue so, till the end of time; and that attempts to reform him, are equally absurd and dangerous—Yet it is evident, that man is a rational being, is formed for improvement; experience, history and common observation demonstrate this truth; as well as the various states and gradations, that presently subsist among mankind; from savage to civilized, from rude to refined: and in the human species, as well as in the individual; a progress, is evidently conspicuous. Every subsequent generation, by improving upon the discoveries of the preceding, tending to that perfection; which must result, from the united efforts of many ages.

Men

Men of liberal minds, of integrity and real abilities; must reject with contempt, such general, vague and ill-founded inferences and observations—will be swayed only, by particular and valid objections—will easily admit the imperfection of human sciences in many particulars, as well as their capability of further improvement, and the very great importance, of such improvement to mankind; while their candour, will readily forgive many defects, in the execution of such attempts; when they reflect, that the utmost efforts of human abilities, the sublimest exertions of genius are required, to trace science to its first principles, and establish it, on the solid and permanent basis, of reason and of nature.

How far, the author has succeeded in these respects; to such he appeals—his ambition, however great, being confined to the approbation; of the wise and virtuous alone—He is solicitous only, to “earn the fair esteem” of honest men; whose praise is fame.—The censure or approbation of others; he equally disregards.

He has endeavoured to divest himself of prejudice and partiality, and to view events, characters and circumstances;

stances ; with the unimpassioned eye of calm philosophy. If he can trust his own feelings, his heart bears witness, to the disinterested purity of his intentions. He cannot stoop, to the low arts of popularity, “ with doctrines “ suited to the varying hour :” and as he does not wish to deceive, he cannot condescend to flatter.—Unconnected with party and uninfluenced by faction, he uses no artful insinuations, willingly misrepresents no facts, or draws any insidious inferences ; and however ardent the zeal with which he is actuated, however great his affection for his country ; yet he flatters himself, he is not so much influenced, by narrow illiberality of sentiment, as to forget for one moment that he is a citizen of the world ; or in any instance to prefer, the advantages of his country, to those of humanity.

Bold in conscious innocence, and animated by the rectitude of his intentions ; he gives full scope, to the wishes of his heart ; he writes with freedom, and a perfect contempt of personal consequences ; but he has avoided personal abuse. It is measures not men, he wishes either to censure or recommend ; and if his work

contains any thing, that may give just offence, that may wound the bosom of innocence, or be productive of any pernicious consequence ; he can only say, that it was not intentional ; and that if he had been sensible of it while he wrote, the repenting tear had wiped it out.

He is too deeply impressed, with an idea of the importance of the subjects which he treats ; and too anxious for the improvement of science and discovery of truth, not to wish the doctrines he has advanced may undergo, the fullest scrutiny and discussion ; and he desires no indulgence, but what candour may be inclined to allow, for such mistakes as are hardly avoidable, in a work that is the rude production of a very few months ; and that is hurried by the circumstances of the times, immaturity into the world ; “ with all its imperfections on its “ head.”

He has studiously avoided any display of historical knowledge, from an apprehension, that in place of illustrating, it might have perplexed his reasoning, and rendered his doctrines more obscure.

The defects of style are not to be attributed, to any
disrespect

disrespect for the publick ; but are partly the effect, of the shortness of the time employed in preparing the work ; and partly, of the mean talents of the author : however, if the principles are approved of, and future editions are required ; he will endeavour in this respect, as well as in others ; to render the work less unworthy of the public acceptance.

That the doctrines he has advanced may rest on their own merit, independent of the character, of the virtues or the vices of their author ; he has thought proper to usher them into the world, without his name : though he hopes, he shall never commit any action, or express any sentiment, he dares not openly avow ; should honour require it, or circumstances render it proper.

PRINCIPLES

O F

LAW and GOVERNMENT.

S E C T I O N I.

Of the Origin of Law and Government..

MANY historical, poetical and moral writers, as well as political, have supposed ; that mankind existed prior to the establishment of society in a state ; which, on that account, they have denominated, the state of nature—which state has been represented by them, in
very

very different and even opposite lights ; some regarding it as a state of the most perfect felicity, peace and tranquillity ; while others have represented it, as a state of the utmost misery ; a state of war, of rapine, and of murder.

Of the latter opinion was Hobbes and many others, who imagining that mankind, under such circumstances, would be actuated by mutual hate and animosity, concluded that such a state must of consequence, be a state of war and of misery—While Montesquieu and his followers, inclined rather to the former opinion, and supposed, that man in that condition would be influenced by fear : And though they have not represented it, embellished with all the alluring colours of the golden age of the poets ; yet they have represented it, as a state of peace and tranquillity.

The opinion of Montesquieu, in this instance appears to me, evidently worse founded, than that of Hobbes—for allowing it to be a state of fear, yet man naturally hates what he fears ; and though cessations of actual hostilities, might in consequence of mutual fear, occasionally

fionally take place; yet such a state would certainly be a state of discord and animosity; and consequently a state of war. But man, in consequence of the great train of wants to which he is subjected by his nature and circumstances; naked, weak and defenceless; a prey to wild beasts, and exposed to all the fury of the elements, is incapable of existing in such a state, with ease and conveniency. Nature, indeed, hath presented him with a rich profusion of materials; but they are generally, rude and unpolished.—She rewards his industry with riches, with the necessaries, the conveniencies, the elegancies of life.—But independent of industry, she has bestowed little on him proper for his use: and so weak and so helpless is the individual, more particularly in infancy, in sickness and in old age, that without the assistance of others, he could not supply himself with necessaries, or defend himself from injuries.—Such a state therefore, would necessarily, soon terminate in the extinction of the species; though the sexes might occasionally associate, for the purpose of procreation.

To avoid these evils and inconveniencies, and to obtain those advantages and enjoyments, which cannot otherwise be acquired ; or acquired in such perfection : he is of necessity obliged, to have recourse to that state, in which alone he can hope, to avoid the one and obtain the other ; and for which, he is so admirably adapted by nature——the state of society——in which he soon discovers, many ways of alleviating these evils and inconveniencies, and of rendering his condition more secure and agreeable.—He soon perceives that some men are better formed, for some kind of pursuits and other for others : that the mutual aids which men give and receive, diminish in effect the labours of each, and increase the abundance of all : at the same time, that the combined strength and reason of the individuals, give security and protection to the whole body : And though he may have associated with no other intention, than benefiting himself alone, his interest is necessarily, soon interwoven with that of others ; and he finds himself by degrees engaged, in all the indearing connexions of family, friend, neighbour, fellow citizen and fellow creature.

The

The wants and fears of mankind then, as well as the increase and preservation of the species, make it necessary for them to live in society, at least in families—But a state of society is in no respect incompatible with a state of nature; for if there is any propriety in such a term, it can be only, when applied in opposition, to the political state of society.—When no human, no artificial, no political regulations and distinctions are established; mankind may justly be said to be in a state of nature: and in such a state it is evident, that all the members of the society, must be upon a political equality; for that is the very essence, the distinguishing characteristic of such a state; is included in the very definition and description of it, and admitting the contrary in any instance, would in effect be establishing, the political state of society.

This equality has generally, and in my opinion erroneously been denominated, the natural equality; in place of, the natural political equality, of mankind *: for not-

* I am sensible there is an impropriety, in calling any thing in a state of nature, political; but as this equality respects political power only, I am really at a loss for a more proper term, and should gladly adopt a better.

withstanding this political equality, the natural powers and endowments, of the different members or individuals, may be very variously proportioned, and bestowed in very different degrees.

That mankind are naturally in a state of political equality, is a proposition that appears so self-evident, that it seems surprizing to me, it ever should be disputed.

If rulers derive their political superiority from divine right, that divine right has not been promulgated to mortals, either by reason or revelation; and I cannot avoid regarding it as an impious, as well as an absurd and servile doctrine, which invests one set of men, with the power of tyrannizing over and trampling on their fellow creatures, and which pretends to derive that right, from a Being infinitely wise and good—that clothes, with the power and authority of the Almighty, those, who from the defects of their education, and the peculiar disadvantages attending their situation, are frequently among the weakest and most vicious of mortals; who, neither merit or receive any particular marks of respect, when deprived of their offices and au-
thority,

thority, of their political superiority; and who, are then indeed distinguishable, from the common herd of mankind, only, by the peculiarity of their prejudices, and the superiority of their vices.

If this divine right is inherent in certain families, and goes in blood as some have advanced; by what rule are we to know these families, or that Royal blood? Do the children destined by nature for authority, bring any marks into the world with them, whereby they may be distinguished?—Are they not equally weak, helpless and ignorant as others?—But allowing a right in certain families; still, those eastern nations only, in which the succession goes in the female line, can have any reasonable security, of the Royal power and dignity continuing in such families.

Under the same impious pretence, others have given a power to fathers over their children, which neither reason nor revelation authorizes; the power of life and death, of tyrannizing over, and tormenting them at pleasure—which pretended power, they have transferred to sovereigns, or rather to one universal tyrant,

as the lineal male descendant and heir of Adam, the father of all mankind.—Such doctrines, are too absurd to require any confutation, and merit contempt only. These doctrines that inculcate passive obedience, and endeavour to establish the justice and legality of absolute power, or the tyranny of the few over the many ; endeavour to establish the justice and legality of outrage, rapine and murder ; and their propagators, endeavour to convince the people, that they are the property of their oppressors ; and to persuade the tyrant, whose favour they court, the legal murderer they would establish, that by divine right he may with justice, trample on his fellow creatures, may rob them, use them as beasts, or worse than beasts, and even destroy them ; if agreeable to his gracious pleasure.

The exercise of this pretended right, is in the highest degree unjust ; and it is not only foolish in the extreme in any one to be so far deceived by such doctrines, as voluntarily to resign his natural and just rights, to the arbitrary will of another ; but such resignation is equally culpable and impious, as to usurp that power over others.—

“ Men,

“ * Men,” as has been well observed, by the sagacious, the illustrious Locke ; “ being the workmanship of one
“ omnipotent and infinitely wise Maker ; all the servants of one Sovereign Master, sent into the world by
“ his order, and about his business, they are his property whose workmanship they are, made to last
“ during his pleasure, not their own ; and he who cannot justly take away his own life cannot justly
“ give another power over it, for no one can confer more power to another than he possesses himself.”

It is a duty incumbent on all, to maintain these rights inviolate ; and reason and reason's God, authorizes any one, to repel force by force, and resist those, who endeavour to assume a political superiority over him, contrary to his interest and inclination ; to retaliate, to deter, and to punish, nay even to destroy such, as endeavour by unjust means, to get him into their power ; “ ‡ it being
“ to be understood as a declaration of a design upon his
“ life, for he has reason to conclude, that they who
“ would get him into their power, without his consent,

* Locke on Gov. Part 2d. § 6. ‡ § 17.

“ would

“ would use him as they pleased when they got him
 “ there, and destroy him too when they had a fancy to
 “ it.”

This natural liberty, this political equality and independence; is the birthright of every one: of him who was born to-day, equally as of him who was born two thousand years before. The choicest gift of Heaven to man, and what none can be justly deprived of, without his consent, or contrary to his interest. “ * Man,” says Locke, “ is born free as he is born rational; not that
 “ he has then actually, the exercise of either; age that
 “ brings the one, brings with it the other too †: and no
 “ engagements of the father can bind the son, or affect
 “ his liberty. The son is indeed under the tuition and
 “ direction of his father, till he arrives at the age of
 “ discretion; but after having attained that age, he is al-
 “ together as free as his father; and no act of the father
 “ can bind him more than any other man. Nay, though
 “ the father, by his crimes, had justly forfeited his
 “ liberty; that circumstance cannot in equity, affect

* Locke on Gov. Part 2. § 61.

† § 116.

“ the

“ the freedom of the son ; for the son is not in justice
“ accountable for the actions of his father, or punishable
“ for his crimes. The father may indeed annex such
“ conditions to the land, he enjoyed as a subject of any
“ state, as may oblige his son to be of that community,
“ if he will enjoy those possessions which were his
“ father’s ; because that estate being his father’s pro-
“ perty, he may dispose or settle it as he pleases.
“ * And states not permitting any part of their dominions
“ to be dismembered, nor to be enjoyed by any but those
“ of their community, the son cannot ordinarily enjoy
“ the possessions of the father, but under the same terms
“ his father did, by becoming a member of the so-
“ ciety. ‡ And though every one that hath any pos-
“ sessions or enjoyment, doth thereby give his tacit con-
“ sent, and is as far forth obliged to obedience to the
“ laws of that government, during such enjoyment, as
“ any one under it ; whether this his possession be of
“ land, to him and his heirs for ever, or a lodging only
“ for a week ; or whether it be barely travelling freely

* § 117.

‡ § 119.

“ on

“ on the highway : and in effect, it reaches so far as the
“ very being of any one within the territories of that
“ government. * Yet submitting to the laws of any
“ country, living quietly and enjoying privileges and
“ protection under them, makes not any one a member
“ of that society : This is only a local protection and
“ homage due to and from all those, who, not being in
“ a state of war, come within the territories belonging
“ to any government, to all parts whereof the force of
“ its laws extends. Nothing can make any one so, but
“ his actually entering into it by positive engagement,
“ and express promise and contract.”

In a state ‡ of nature, or political liberty and equality, in which the individual, acknowledges no superior on earth ; man, can be subjected to no human laws, for without a superior, there can be no law——law being an injunction, not a matter of persuasion——But as a creature and dependent Being, he must necessarily be subjected, to the laws of his Creator and Preserver, and

* Locke on Gov. Part 2. § 122.

‡ Vide Blackstone's Comment. Introduct. § 2.

undoubtedly

undoubtedly ought in all points, to conform to his will.

God as a Being of infinite power, might have prescribed whatever he thought proper, to his creature man, however unjust or severe; but as a Being of infinite wisdom and goodness, he wills his creatures to enjoy, all the happiness of which their nature is susceptible, and has therefore laid down such laws only, as evidently tend to their own prosperity, perfection and felicity; as were founded on these relations of justice, that existed in the nature of things, prior to any positive precept, and to which he himself, in all his dispensations conforms; and has been graciously pleased, to reduce the rule of obedience, to this one paternal precept: That EVERY ONE SHOULD ENDEAVOUR, TO PROMOTE THE GENERAL HAPPINESS.

He has endowed mankind with self-love to animate them, and with reason to direct them, in that pursuit; and that this law might not want a sanction, he not only has impressed on every mind, the well-founded hope of future reward, and an awful dread of his just resent-

PART I.

E

ment;

ment ; but has made it the interest, as well as the duty of all mankind, to punish the transgressors ; and of consequence, that of the individual, to avoid his and their just resentment.

The laws comprehended under this general precept, have been denominated, the laws of God and Nature ; as being coeval with mankind, and dictated by God himself.

The laws of nature, I define to be—those laws, which the nature of man points out, as essential to his existence, and conducive to his happiness ; and which his reason therefore approves of, and informs him, are on these accounts, agreeable to the will of an infinitely wise and good Creator *.

The

* This definition of the law of nature, differs materially from any, that has hitherto been given. Ulpian and the Civilians define it, *Jus naturale est, quod natura omnia animalia docuit*. Thus, including brutes as well as mankind, irrational as well as rational beings ; and thus, rendering the knowledge and observance of these laws, in no respect dependent on the exercise of reason. Grotius defines it, *Jus naturale est dictamen rectæ rationis indicans actui alicui, ex ejus convenientia aut disconvenientia cum ipsa natura rationali, inesse moralem turpitudinem,*

The law of nature, as the law of God, as containing nothing that is prejudicial, and comprehending all that is conducive to human happiness; ought to be binding in all countries and at all times; ought to be the source from which all human laws should be derived; and these laws ought to have no validity, but what they receive directly or indirectly from this original.

What is denominated the law of nations, is only this law, when applied to sovereign states, who acknow-

turpitudinem, aut necessitatem moralem, ac consequenter ab auctore naturæ Deo, talem actum aut vetari aut præcipi. Grot. de Jur. Bell. & Pac.

Puffendorf objects to this definition of Grotius, that it still remains obscure what those actions are, which are in themselves unlawful, and by what tokens, they may be distinguished from others. Hobbes, Locke, &c. make reason the law of nature. But reason properly speaking, is not law but the medium, by which if rightly applied, that law may be discovered. The province of reason is not to point out, but approve or disapprove, what is offered to its determination. Puffendorf thus defines the law of nature : *Illa est quæ cum rationali et simili natura hominis ita congruit, ut humano genere honesta et pacifica societas citra eandem constare nequeat.* Puff. de Jur. Nat. & Gent. This definition, seems rather to describe the effect, than to explain the nature and essence, of the law in question.

ledge no superior upon earth. Political or municipal law, under which I include government, ought to be—that law, which the nature and circumstances of that particular society, for which it is instituted, point out, as most conducive to the happiness and preservation of the individuals who compose it, without invading or injuring the rights of others. Which law, in fact, is only the law of nature, applied to that particular society; and any municipal law or act, having an opposite tendency, is a violation of justice, and contrary to the divine will.

The law of nature having for its object, the preservation and happiness of the human race, self-defence must be the first, and most important right it confers.

In a state of nature it is the duty, not of the person injured only, but of each individual, to punish those, who transgress the law of nature, in such a manner, as to procure a due restitution of the injury, when possible, and to prevent its violation in future. Any one in transgressing the laws of nature, denies being bound by the
ties.

ties of humanity, and acknowledging no rule but that of force, the law of beasts; as a creature noxious and hostile to mankind, by mankind should be destroyed; for where all cannot be preserved, the safety of the innocent is to be preferred; and when there is no superior on earth to appeal to, force by force alone can be opposed. If the right of punishing in a state of nature, was not vested in some one, the laws of nature would be vain and unnecessary; and if vested in any one, it must necessarily be vested in all, since all are by nature, politically equal.

But it is not the duty only, but the interest of the individual, to support the rights of society; for the rights of society, are the rights of mankind; and consequently, in vindicating and supporting these rights, he vindicates and supports his own. A private right cannot be violated, without violating that of the public; or a public right, without violating those of the individual: whatever is conducive to the advantage of the community, must prove for the interest of the members that compose it; and whatever is for the advantage of each particular

ticular member, must certainly be for the public advantage. And hence the great importance to mankind, whether collectively or as particulars ; that these rights, should be properly defined and ascertained, that they should be fully enjoyed and properly secured. But it is not only the interest of mankind, to combine and exert themselves in preventing or punishing villainy and oppression ; but it is likewise their interest, to refrain from such pernicious practices, to augment the general happiness, and alleviate human misery, by aiding and assisting, cherishing and comforting each other, to the utmost of their abilities.

Vice, is in every respect, a very short-sighted policy, and has justly been denominated, the offspring of folly. It eagerly grasps at immediate and petty advantages ; but being altogether incapable of enlarged and comprehensive views, or penetrating deep into consequences, it usually mistakes its real interest, and becoming the dupe of its little mean artifices, is generally caught in its own toils. He who injures another, by that action, not only renders himself obnoxious to his fellow-creatures, but incurs the
just

just displeasure of his Creator. He subjects himself to the particular resentment of the injured, the detestation of the wise and good, and of all who know their own interest. He not only exposes himself by the example he has given, to similar acts of violence and injustice, but likewise to those pains and penalties, if in a state of civil society, which justice and the laws of his country has ordained for such crimes. He forfeits all respect, esteem, affection, and confidence, and though he may escape for some time condign punishment, he loses that peace of mind, which innocence only knows, and by that means, not only the enjoyment, of what he may have unjustly acquired, but all enjoyment. Filled with fear and consternation from a consciousness of guilt, and the thoughts of those punishments, which he is sensible he justly merits, and which his imagination in brooding over, incessantly presents to his view, under the most hideous aspects; magnified and exaggerated by fear and heightened with all the colourings of fancy; occasioning, the cruelest anxiety, the most dreadful apprehensions, the most poignant, exquisite and excruciating torments, of which

the human mind is susceptible, and from which, no art, power or concealment, can possibly exempt it. These impressions, in place of fading with time, become deeper and deeper, from reiterated recollection; for an evil conscience, “is a green-eyed monster, which doth
“make the meat it feeds on,” and fattens on its own accumulated gall——Dread, distrust, horror and despair, with those compunctious visitants of nature, the daggers of the mind; harrow up the soul, and embitter life——every noise appalls——deep-rooted sorrow, weighs upon the heart; and sleep, is either banished from the pillow, or is haunted, by the hideous phantoms of former villainies; those scorpions that prey, on guilt-oppressed minds. After long enduring the most inexpressible anguish, the most dreadful perturbation of soul, he probably, at last, falls a melancholy but just victim, to vice and to folly.

He who would injure another by imposing a falsehood on him, is but little aware of the danger attending it; many circumstances conspire to discover the truth, and more ingenuity is required, to fabricate a plausible lie,

lie, than is generally imagined ; as a fallhood usually, either falls short of or exceeds probability, and commonly requires so many more to support it, that the fallacy at last, becomes gross and palpable——Sir John Falstaff's two men in buckram, became at last, eleven.

He who plays the villain, plays deep game ; as hazarding reputation, fortune, liberty, happiness or life, by every violation of justice ; and though he may escape for some time, like those desperate gamesters, who stake their whole fortune on every hazard ; must at last, be inevitably ruined.

Virtue, independent of the ease of mind and inward satisfaction it affords, is the surest, the only safe road to opulence, power and honour ; and the only road, to happiness.——Truth, humanity and justice, are even in this life rewarded, with confidence, love and esteem ; while the villain, hated and despised, is never able to obtain any credit, but by a dissimulation and feigned appearance of virtue ; and none even by that means, after detection. Nothing is more insinuating

persuasive and engaging, more universally popular, than virtue. It affords the only pleasures, that can be enjoyed, without satiety or remorse; and which defy, the secret shock of envy, and all-sapping time. To sum up all in a few words, its ways, are the ways of pleasantness; and all its paths, are peace.

But though it is evidently the interest, as well as the duty of mankind to be virtuous, and though God and the law of nature authorizes every one, to punish those who transgress that law——yet, so depraved are mankind, so corrupt is human reason, so blinded by prejudice and so swayed by passion, so full of ignorance and error, even when instructed by the experience of ages, and far more, in a rude state of society: that envy, jealousy, revenge, every malignant, every vicious passion, that disturbs the peace, harmony and happiness of the human race, and racks and torments, the bosom of the wretch that entertains them, would rage with unbounded fury, if restrained only, by the common ties of humanity. If mankind, in a state of nature, for want of a common superior on earth, were
obliged

obliged to appeal to force——If every individual, was the judge in his own cause, and the executioner of his own judgments——in such a state, every one would necessarily believe himself in danger; and believing himself in danger, would necessarily destroy, that he might not be destroyed——mankind would be a lawless, unprincipled banditti, a den of thieves and murderers, hating and hated, devouring and devoured.

If the foregoing is a just representation of a state of nature; such a state is certainly, a state of licence and of anarchy, of war and of misery; and though it may occasionally take place, it is evident, it could not be of long continuance, without terminating in the dissolution of society, and extinction of the human race.

It is not the wants and fears of mankind, as Sir William Blackstone and others have supposed, that forms the bond, of voluntary society *. Their wants and weaknesses indeed, make them associate; but it is justice alone, that cements the union——Even robbers,

* Blackstone's Comment. Introduct. § 2. p. 47.

pirates and other banditti must observe justice, with regard to each other, however much they may disregard it, with respect to the rest of mankind; and according to such observance, the more or less valid, will the union be among themselves.

With the design of avoiding the evils, and remedying the inconveniences, attending a state of nature, of preventing violations of justice, or preserving this cement entire; mankind for their common advantage, for the general good, have voluntarily divested themselves of their natural liberty, resigned to the society at large, the particular power and privileges, which as individuals in a state of nature, they derived from the law of nature, and civil governments, have been established; whose mandates, all the members obliged themselves to obey, so long as they should be subservient to the intention for which they were originally instituted.

Such, it has been supposed, is the natural progress of mankind, from rudeness to civilization, from the state

of nature, to the political state of society. Such, according to the advocates for liberty, the origin of all government; and such, the original contract of society; which, though perhaps seldom formally expressed, it has been supposed, has always been tacitly acknowledged, or understood and implied, in the very act of associating.

I wish, the virtue and moderation of mankind, could authorize, my adopting such an opinion. Would we could see, ambition restrained by justice; and mankind spurning equally, servitude and tyranny.—But, when I reflect, how easy it is for the few in many cases, by fraud or violence, to usurp an unjust authority over the many, and to draw them into a state of civil society, contrary to their inclination—when I find most governments, only a combination of villains, for tyrannizing over and oppressing the people—when I reflect, how fond mankind are of authority, and how apt to abuse it; and when I perceive, that power, by power alone, can be restrained; I am rather inclined to think, that most civil governments have
originally,

originally, been the offspring of violence and usurpation; and that any improvements they may have since received, must have been the consequence of experience, and the wisdom of more enlightened ages.

This seeming concession however, can in no respect avail, the servile maintainers of arbitrary power. In place of weakening, it strengthens and supports, the cause of liberty and of mankind, by establishing it, on more just and solid principles, than those, founded on an ideal contract. For mankind being by nature politically equal, it is evident that none, could acquire a political superiority over others, but either by their own consent, by an original contract, or by fraud, violence and injustice. If there was a contract, it is evident that rational creatures, would not voluntarily consent, to what was for their disadvantage; unless the consent was fraudulently obtained; in which event, it could not in justice, be deemed valid; and if there was no contract, it is equally evident that in equity, there ought to have been one. It is likewise
evident,

evident, that power obtained, by any other means than voluntary consent, must be unjust and oppressive, and that the community of consequence, are not only authorized at any time, by all the laws of God and nature, but it is likewise their duty, whether there was any original contract or not, to redress their grievances; to assert, to vindicate, recover and maintain, their natural and just rights; to watch over and controul, the operations of government; to resist usurpation, extirpate tyranny, and punish the delinquents; to assume that dignity, and act with that vigour and rectitude of conduct, which becomes the sacred majesty of the people; to teach cruelty, avarice and ambition, a proper regard for virtue and for justice, and to dread that power and authority, with which the Almighty has armed his creatures, for vindicating their just rights, and punishing those who invade them.

SECTION

SECTION II.

Of Government and Law in general.

IN political society, there must necessarily be a legislative, executive and judicial power; for without such, mankind would be in a state of nature, have no human rule for regulating their conduct, and no judge on earth, to whom they could appeal. And as the sole end and intention of political society, ought to be the common interest and welfare, of the people associated, it becomes necessary to prevent partiality and injustice, for every member, to have that equal share in the legislative power, to which he has a just right——Nature having given no one, a political superiority over another——And as among such fallible creatures as men, unanimity is too seldom to be expected, to afford a solid foundation for a political establishment, which in that case indeed, would be altogether unnecessary, as each would voluntarily do
that

that, which the others inclined he should; it becomes necessary, that the laws approved by the majority of the members, or any greater number they may agree upon, should in all cases, be binding on the whole community. For if that was not the case, and any number less than the majority, and contrary to their interest and inclination, enacted the laws; or if the laws were not equally binding, on those who enacted them, as on the other members of the community; these laws could not with any propriety, be called the laws of the people, or be regarded in any respect, as by their approbation, or for their interest. Where there is no possibility of gratifying every one, it is proper to gratify, the greatest possible number.

The legislative power, or that which regulates the conduct of the members, must always, be the supreme power of the state, for an inferior power, cannot dictate or prescribe, and exact obedience from a superior; and, when that power, is lodged in the people alone, it is evident, that the executive power, can only be the servants of the public, and that all the members when

PART I.

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necessary,

necessary, are bound to assist in the execution, of what is either actually, or from the nature and principles of the establishment, virtually, their own decrees.

Though it is proper that the legislative power, should be lodged in the people collectively, this is not so necessary, with regard to the judicial power, and indeed would be very inconvenient, except in very small states; however it is altogether necessary, that the people retain that power; for otherwise, their laws might avail them little, and they might by that means, be deprived entirely, of their legislative authority. The judicial power therefore, in large states, ought to be lodged, in certain specified numbers of the people, peers of the vicinage, or what in this country, we denominate juries*, who in all cases, should

* The number of jurors, should be determined and established by law for each particular trial, as well as the number that may be peremptorily challenged, for if the latter number is specified and not the former, the privilege of challenging in this manner, may be rendered of very little effect if not altogether abortive. The accused besides being allowed council, should not be denied the privilege,

should be judges of the law, as well as of the fact. In this country, one objection only of any validity, can be made to this practice; that from the multiplicity, the complicated nature and intricacies of the laws, men not bred to and learned in the law, can be no competent judges of it—But the evils attending a contrary practice, would greatly more than counterbalance

lege, of speaking in his own defence. Council may misapprehend, or (from undue influence) misrepresent facts, and many circumstances render the accused, more proper, for stating and elucidating the matter, for justifying his intentions and proving his innocence. Council should be allowed the accused for assisting them, not as a pretence, for depriving them of the privilege, of speaking in their own defence or proving their innocence. To pretend that the judge will act in all cases, as the friend and council of the accused, is in the last degree absurd, and is contradicted by experience. The judges are the creatures, and often the instruments of the executive power, and frequently (particularly in cases of high treason) act as council against the accused, and regard it as their business, rather, to criminate than exculpate. The spirit of Epsom and Dudley will never be extinct, and Jeffries if tolerated, will never be wanting. The crime of high treason in particular, should be distinctly and accurately defined. To find among the list of legal crimes, such a one as constructive treason, must be a disgrace on a free people; if such a people, can justly be called free.

any inconveniences, occasioned by this means. Besides, this is making one abuse, justify another. This defect should be remedied, the laws should be promulgated, in an obvious, distinct and clear manner, that every one who is bound to obey them, may know his duty, and whether he has justice or not, from those who pretend to know them, and are entrusted with their execution. Obscure laws may ensnare mankind, in place of protecting them; and no one in equity can, or legally ought to be, subject to any law, of which he has no knowledge, whether from any natural defect, or from that law not being promulgated to him, or promulgated in such a manner, as he cannot possibly understand it. The laws, should be expressed in the common language of the society, for which they are intended, and freed from those redundancies, unnecessary repetitions and that harsh uncouth jargon, in which they are at present involved. If there are contradictory and unnecessary laws, these should be repealed, and the law reduced to the greatest degree of simplicity,

of

of which it is capable. Such a reformation, would be conferring a most material obligation on the community, and would not leave even a specious pretence, for depriving mankind of that inestimable blessing, trial by jury, in its utmost perfection.

As I profess not to treat of human laws, but of the principles which ought to influence them, I have rejected, such of the definitions and distinctions, of those who treat of these laws, as appear to me, either unnecessary, or not sufficiently simple, just and comprehensive ; and I have substituted others; which with much diffidence, I offer to the public.

If what I advanced in the former section, is well founded, that justice alone is the cement of voluntary society, and that preventing the violation of it, or preserving this cement entire, is the only justifiable foundation, of political institutions and regulations, the prevention of injustice, ought to be the principle, which should influence every human law ; and hence, laws, may, with equal simplicity and propriety, be defined, ORDINANCES OF THE SUPREME POWER, FOR

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THE PREVENTION OF INJUSTICE. Justice*, in our language as well as in others, admits of many different significations; but injustice I apprehend, admits only of one precise, determinate meaning; and may be defined, NOT RENDERING EVERY ONE HIS DUE.

Were laws, agreeable to this principle, the penalty only would be human. If robbery by positive precept, is declared a crime and punished—it was a crime, before the precept. The law, is the law of nature; the precept, only, is civil.

As the sole object of human laws then, ought to be the prevention of injustice, and as injustice, consists in a failure of duty; it is of the utmost importance to know, in what duty consists: but, if we can ascertain, the rights of every one, we shall know, the duty of every one; for rights and duties are reciprocal, and where there is no just right, no duty, can justly be required.

Moral writers distinguish rights, into perfect and

* For the different signification of the word Justice, vide Taylor on the Roman law.

imperfect. To fulfil the former, is necessary to the very being and support of society—to fulfil the latter, is a duty equally sacred and obligatory, and tends to the improvement and prosperity of society; but, as the violation of them, is not equally prejudicial to the public good, the fulfilling them, is not subjected to the cognizance of laws, but left to the candour, humanity and gratitude of individuals.

The simplest division of perfect rights, has been into, personal rights and rights of property—Though perhaps, all rights may with justice, be said to be personal rights.

These rights I again divide, into natural and political—And these are all the divisions, which I think, the nature of the subject requires.

The natural rights of mankind, are those rights, which are invested in them, by the immutable laws of nature; rights of which they cannot be deprived, without the most flagrant injustice, and which the legislature therefore, should be particularly attentive to maintain inviolate.

These

These consist, in the right of self-defence, in the uninterrupted enjoyment of life, limbs, body, health and reputation, of liberty and property.

To protect these rights and secure them against the violations, to which, in a state of nature, they are so much exposed, ought to be the principal end and intention of political institutions; which, in place of contracting or diminishing natural liberty, ought to extend and enlarge it, by preventing violence and unjust restraint. True liberty consists not, in a power of acting as any one may think fit, but of acting without constraint or controul, provided, he does not injure others.

Enumerating the political regulations, necessary for supporting natural personal rights, would only be narrating the laws of England, relative to this subject; which are so admirably calculated for this purpose, as perhaps, to be incapable of much improvement. In one instance however, that of impressing, they seem to operate in a manner, directly repugnant to these principles. However, if this expedient was
never

never carried into practice, but when necessity, the safety of the state, engaged in a just war, required it, the injustice could consist, in the mode of impressing, or the manner of carrying it into practice, only. Impressing for the national service, being really a personal tax, and in no respect more oppressive and unjust, than any other tax, excepting, on account of the partiality, with which it may be carried into practice. On particular exigencies perhaps, a sufficient number of seamen, could not be obtained by any other means, and it is particularly to be observed, that those, who follow a seafaring life, voluntarily engage in it, with the previous knowledge, of their being liable to be impressed, when the national safety, when the good of the state renders it necessary. When landmen are required, whether for the navy or army, was it legally and publicly notified, that all the men in the kingdom, within a certain age and fit to bear arms, should be obliged, to furnish out of their number by lot, such quotas, and at such times, as the exigencies of the nation may require; the royal family, judges, mem-

bers of parliament, clergy, soldiers, sailors, and such others, in the service of the public, as could not conveniently be dispensed with, together with such, as have two or more children, excepted. To except all such as are married, without any regard to the number of children, might be attended with very bad consequences, as it might induce many to marry, upon the spur of the occasion, who are in no condition, to support a family or maintain a wife and children, and whose progeny, would become a burden on the public, and from want and bad usage, probably, would never arrive at maturity, and consequently, could be of no national advantage. Nature, has furnished, inducements enough to marriage.—Were none, forced into the service, but those, on whom the lot falls, except such, as may be convicted by a jury, of bad character; premiums being given, and constables appointed, for apprehending of such, upon warrants granted, by justices of the peace, &c, a high bounty being allowed, at the same time by government, to such, as will serve voluntarily. Were these regulations put in
execution,

execution, the idle and the vicious would be picked out, and upon legal conviction, be forced into the service and made useful to their country ; and except, with regard to these, no partiality would take place, consequently, no injustice or well-grounded complaints ; every man, would have an equal chance, and the number required, might be depended on by a certain day. This last circumstance is of great national importance, for often, may an opportunity be lost, by not being prepared for profiting of it, that never can be regained, or the loss compensated ; besides, any very considerable advantages or disadvantages, in the beginning of a war, are always attended with the most important consequences, and greatly affect all future operations. A vigorous exertion at first, would have a greater tendency, to end a war soon and to end it honourably, and with less expence and inconveniences, than feeble operations, however long protracted.——Would they not add more, to the national honour, character and influence ?——Would she not be more respected, and feared by other nations ?——The exe-

cution then, might be prompt as the purpose, and seldom would she have occasion, to promise or threaten in vain. Conscious of her power, her measures would no longer be characterized, by that irresolution, fluctuation and delay, for which they have for some time, been so remarkably distinguished. Unnecessary hesitation and diffidence, would be banished her councils, and stability and vigour, would supply their place. Had one fourth of the blood and treasure, that has been expended on the present American war, been employed properly and vigorously at the commencement, the war would have been ended within the year; whether justly and honourably, I shall not at present examine. Trade and manufactures would have suffered little, from privateering or any other cause, as the interruption at any rate, would have been but short; the French, Spanish and Dutch wars, would have been prevented, with all the evils consequent of them; Great Britain, Ireland, the West Indies, &c. would not have been involved, in their present distressed calamitous situation; government, either,

would

would not have had occasion to borrow, or could have borrowed, on terms, greatly more favourable than at present, after incurring so much additional debt, and suffering so many losses, at the same time that her enemies, are become greatly more numerous and more powerful. Every vigorous and successful measure, as tending, to a speedy and honourable conclusion of the war, would have strengthened and supported, the credit of the nation, would in a manner, have served as a new fund for that purpose, and by giving security and protection to trade, would have added to the national riches, or ability of the subjects, to pay taxes or lend Government, and proportionally hurt, the trade, riches and credit of her enemies. Carrying on war by slow and feeble exertions, is like employing one man, to remove an obstruction which he cannot move, though he might busy himself, fifty years in attempting it, in place of employing ten men, who could remove it in five minutes. If members of Parliament, &c. would likewise cast lots, it would render the measure more popular, and would be attended with no very great
expence,

expence, or be no very heavy tax on them, as obliging such only, on whom the lot falls, to hire a man to serve in their place. Every county should be divided into districts, and a certain place within each district appointed, for those, living within that district, to meet at, for casting lots at the appointed times, and a party of soldiers or militia, and constables, &c. should attend. Militia service, the labour, for making and repairing the highways imposed by statute, &c. are personal taxes.

With regard to the original, or natural right of property, I think, it appears evident from the nature of things, without having recourse to revelation, which the celebrated author of the Commentary on the Laws of England supposes, the only true and solid foundation of it—that the earth, was intended, for the use of those creatures that inhabit it, and certain creatures for the use of others, by their common Creator; and that every one, had of consequence a just right, to what was not already occupied by another, till such time, as he may think proper to abandon it,
when

when it again becomes liable, to be appropriated by the next occupant *.

As the world, became more populous and more refined, unappropriated property, became scarce and more coveted, a greater quantity of food, and more conveniences were required ; it therefore became necessary, to prevent disputes, tumult and blood-shed, and to procure, the additional quantity of food and conveniences required, and which could be obtained by labour alone, for mankind, for their safety and conveniency, to secure to every one, what by the law of nature he was justly entitled to, the fruits of his own labour ; to appropriate, not the immediate use only, but the very substance of the thing used, to regulate the manner of succession, and the manner, in which property might be disposed of and acquired ; for no

* Mr. Locke seems to think that bodily labour alone, can confer a just right to property. — Likewise, Barbeyrac and Titius. Grotius and Puffendorf imagine, that it is founded on a tacit and implied assent of mankind ; which in fact, would be a political right.

one would toil for that, which another with impunity, might deprive him of at pleasure.

The regulations necessary for these purposes, constitute, the political rights of property; which, if equally just and secure, are more or less perfect, as they are more or less simple, distinct, and few in number. In this respect perhaps, the laws of Britain, are more defective than in any other.

The legal distinctions and divisions of property, into real and personal, fixt, moveable, heritable, &c. with their consequences, the variety of holdings, modes of transference and succession, appear to me, not only unnecessary, but in many respects improper, as occasioning much expence and uncertainty, confounding right and wrong, good and evil——making a mystery of that, which every one ought to know——involving the common rights of mankind, in perplexity, doubt and error——unnecessarily clogging the wheels of circulation, and thereby retarding, the progress of commerce and improvement——— occasioning

numberless frauds, with endless disputes and law-suits.

What is denominated personal, is certainly in every respect, property, equally real, as what in law, is denominated such : and real, heritable or fixed, is really moveable with respect to value, and it is in that light, and that light only, that the law, has occasion to regard it, and may be as easily transferred, if not clogged with unnecessary impediments, as subjects really moveable.

If the feudal form of government, made such distinctions, such modes of succession and conveyancing, and such forms of holdings necessary ; they might then be proper, but why retain them, to our manifest prejudice, when that cause has discontinued to operate, and the feudal form of government, no longer subsists in these kingdoms ?

Let one uniform mode of succession be established, in cases where there is no will or testament ; for every part of the united kingdoms, and for every kind of

PART I.

I

property;

property; provision being made, that none then in life, may be injured by that means.

Let entails of every kind, be abolished. They are productive of many pernicious effects, and in no instance beneficial. It is equally contrary to sound policy and the law of nature, that particular families should be artificially bolstered up, to the prejudice of the other members of the community.

Let the feudal forms of holding, be declared illegal and entirely disused——Let juries of lawyers, &c. be appointed and paid, for examining the rights, of what has been denominated real property, and let such rights as are found good, be registered in certain public offices, established for that purpose; and let, such property be transferred there, with equal ease and in the same manner, that the public funds are, at the offices appropriated for that purpose. The public funds, are as properly real property, as what is commonly denominated such, as being in effect, representations or mortgages, on the land and labour of these kingdoms.

If debts affecting that property, were likewise registered in these offices, it would be productive, of many beneficial consequences.

Let the privileges that attended any of these rights, be registered along with them, and thereby secured, to their respective proprietors.

To make property still more secure, and as a further prevention of injustice, let offices be established, where last wills may be deposited, sealed up, to be opened at the testator's death and publicly read; the relations of the deceased and officers of the office being present, with as many others as choose, the doors being open to every one.

Were these and similar measures adopted, I humbly presume, they would in a great measure remedy, if not totally correct; the evils and inconveniences, formerly enumerated——would wonderfully facilitate circulation, and the operations of commerce and industry, and independent of what presently arises from the stamps, &c. might be employed as the means, of procuring a public revenue; which besides being ex-

tremely productive, could be raised with very little expence or oppression, and which, like the post-office tax, no one would complain of, as the regulation, would contribute much to their conveniency, and free them from much greater evils, than the tax, to which on every transference, &c. they ought to be subjected.

Those who hold their property by injustice, would oppose these regulations; but that, is an additional reason, for enforcing them.

They would likewise be opposed, by the profession of the law, as injuring it, very deeply and in many respects. Both the interest of the public and justice require, that those bred to the law, prior to these regulations, should receive compensations from the public, for the loss of business thereby occasioned, on account of the expence and trouble of a law education, and the loss of their time and youth in the study of it. Perhaps, the scrutiny, might occasion so many disputed rights, disclose so much injustice, that there might be little, or no diminution of law business, at least for some time.

The

The political rights of persons, are either the civil institutions, for maintaining the natural rights of the community inviolate, or usurped unjust rights. Compacts tacit or expressed, conferring such rights, if mutually beneficial, if for the general good, ought to be held sacred; as having likewise the sanction, of the law of God and nature. It is the right and the duty of every one, to abolish usurped unjust rights or powers, and to punish the usurpers: but, when the benefits are reciprocal, the duties are likewise reciprocal, and where there is protection and benefit, allegiance, gratitude, affection, honour, respect and recompence, are justly due.

I define a crime, to be AN ACT OF INJUSTICE, and every invasion of the natural liberty of mankind, which does not tend to their advantage and happiness, however trivial, is in so far, unjust, oppressive and criminal. Nothing should be deemed a crime in civil law, that is not in natural law——That does not tend to diminish, the general prosperity and happiness.

Crimes, have usually been divided, into crimes of
commission

commission and omission, though properly they are all of commission, as he who omits a just duty, commits injustice. They have likewise been divided, into public and private, which appears to me, equally unnecessary and ill-founded, for I can make no distinction, between a public and a private crime. He who injures the individual, in my opinion, injures the public, and he who injures the public, injures the individual. He, who deprives another of the value of twelve pence, by theft or robbery, is thought to injure the public in so material a manner, as according to the laws of England, justly to incur, a capital punishment; while he, who detains from another a field to which he has a just right, (the example used, by the celebrated Commentator on the English law) is said to commit a civil injury only, and no crime against the public. If they mean by detaining, legally and avowedly disputing the right, in that case indeed, it might be no injury, either to the individual or the public, and as a matter, merely of arbitration, merely judicial, it falls not within my plan, further, than endeavouring

deavouring to render such disputes, less frequent, less tedious, and less expensive. If they mean, forcibly and contrary to law detaining a field, that has been legally adjudged, the just property of another, such an act is undoubtedly, full as prejudicial to the public, as many of those, which they have denominated public crimes, for, if it is immaterial to the public, as they say, who is in possession of the field, it is certainly, at least equally so, who is in possession of the twelve pence.

Crimes, arise from the mistaken apprehensions of those, who snatch at some present and apparent advantage, to the prejudice, of their future and real interest. Crimes may be restrained, if not prevented, by the influence of education and salutary political regulations, and indeed, the civil institutions or laws of any country, are very defective, if, independent of other considerations they do not, render honesty the best policy; nor are sanguinary punishments, requisite for this purpose.

The objects of human punishment, ought to be first, The reparation of the injury; second, The amendment

amendment of the delinquent; third, The prevention of crimes, by deterring others; and fourthly, The prevention of crimes, by depriving the criminal, of the power of doing future mischief.

As there are different degrees of delinquency, in crimes of different natures; and different degrees of guilt, in crimes of the same nature: so there should, be different degrees of punishment; the severity of which, should be proportioned as exactly, as human wisdom can determine, to the degree of malignity.

That the law of retaliation, is inadequate to these purposes, appears evident on various accounts.

In many cases, it is not practicable——As when a batchelor, commits adultery. In other cases, it is not a proper measure of justice, from the different circumstances, of the injurer and the injured. In many instances it would afford, no redress to the injured, unless the gratification, of the malignant passion of revenge, may be regarded as such; which gratification in no case, should be the intention of the legislator †,

† This gratification however, has been regarded, by many of our best writers on universal law, as one of the proper objects of punishment.

or object of punishment. In many cases, it would not have sufficient tendency, for preventing future crimes, by the amendment of the criminal, or the deterring of others ; for it is necessary for this purpose, that the guilty should suffer, more than the innocent had done ; and that the punishment should be aggravated, on account of the chance, the guilty have of evading it, from escape, privacy, deficiency of proof, or other causes.

Capital punishments, or the depriving a human being of life, is justifiable in no case, by the law of nature, and consequently ought not to be inflicted, by human institutions ; except, in the act of self-defence, for the recovery of liberty, when unjustly deprived of it, and it cannot be obtained by other means, which is only a species of self-defence, and for murder. The law of nature justifies it in this last case, on account of the danger and inconveniency resulting to society, in allowing a murderer to live ; as there could be no security, that one, who had so far transgressed the laws of God and man, may not repeat the action, but chain-

ing him, like a ferocious beast of prey; in which event, he would be a burden on society, at the same time, that he might otherwise be regarded, as dead with respect to it. Those, who evidently and maliciously intend to murder, though their intentions should not take effect, may I imagine, for the same reasons, be punished capitally in the second instance, or even in the first, if aggravated by other circumstances. Other crimes, may be punished by banishment, hard labour, hard fare, confinement, fine or confiscation, and occasional corporal punishments.

Multiplying capital punishments, is contrary to the law of nature, inhuman, unjustifiable, defeats the end proposed, and consequently impolitic. They lose by their frequency; that very terror, they are intended to inspire; they destroy the offender, but his fate is soon forgotten; and it becomes in time not unusual for criminals, to perpetrate the very crime during the execution, for which the sufferer, is expiring before their eyes. There are besides, some, who dread shame more than death; and many, who would prefer death,

to a life of pain and poverty ; of which latter, are most of those, who engage in desperate undertakings—I am one, (says one of the murderers in Macbeth)

Whom the vile blows and buffets of the world
Have so incens'd, that I am reckless what
I do, to spite the world.

The other adds,

————— And I, another,
So weary with disasters, tugg'd with fortune,
That I would set my life on any chance
To mend it, or be rid on't.

Inhuman punishments, render offenders cruel and desperate ; the robber, who has a certainty of torture and death on conviction, without any hopes of mitigation, is in a manner legally forced, to be a murderer likewise, when he meant only, to be a robber. Sanguinary laws, have likewise a very strong tendency, to render the community, cruel and hard-hearted—— Besides, when punishments are extremely severe, the compassion of the injured, sometimes prevents prosecution ;

cution; sometimes, even the appearance of detection; and sometimes, after conviction, the public, prefer impunity to it: and this uncertainty, the expectation of not being detected, or of escaping after detection, for most, are apt to trust too much, to what they call their good fortune, has a greater effect on the wicked, than the severity of the punishment.—— Whereas, certainty, of suffering on conviction, would be the never-failing consequence, of punishments, more adequate to the crimes.

It has been observed, by the learned author of the Commentaries on the Laws of England, that a multitude of sanguinary laws, prove a manifest defect, either in the wisdom of the legislative, or the strength of the executive power, a kind of quackery in government, and allow me to add, the most dangerous kind, to apply the same universal remedy, to every case of difficulty. Applying the same punishment, particularly a capital one, to crimes of different malignity; besides being highly absurd in other respects, really operates, as a premium for enormity: for who but a fool would risk hanging, for stealing a shilling,
when

when stealing one hundred thousand pounds, could incur no greater penalty ?

Would it not be more agreeable to the law of nature, to justice and sound policy ? to make the thief or the fraudulent pay to the public, the value they had stolen or illegally obtained, one hundred fold, if possessed of so much, giving them perhaps at the same time, a public flogging.

It is necessary to render the practice of vice, a disadvantageous trade, and it is not probable, that any one, would escape a hundred successive times. If their livelihood did not depend upon their own labour, it might be proper to oblige them ever afterwards, to wear some particular dress, both as a punishment, and that mankind might know them for thieves, and be sufficiently on their guard. If their livelihood depended on their own labour, it might perhaps be more proper to give them a severer flogging, than oblige them to wear the dress, as it might prevent people from employing them, even though they should reform. If not able to pay the fine, they should be
confined

confined to hard labour till they earned it ; and if incapable of earning it by this means, should be confined and wrought in this manner, during life ; the public, enjoying the fruits of their labour. They likewise might be occasionally whipped, if the circumstances and enormity of their crime, seemed to merit it. He who maliciously maimed any one, might occasionally receive such corporal punishments, without maiming him, as might be deemed equivalent, to the injury he had done ; might be imprisoned for a certain time, and obliged to pay a very high fine, to the public besides, or, if not able to pay the fine, be confined to hard labour. Similar punishments, might be extended to other crimes, and modified, according to their malignity. By this means, the criminals would become, a living and daily example to others.

Crimes seemingly trivial, as drunkenness, which have a tendency, to occasion others of greater enormity, should be prevented.

Perhaps, ignominious punishments which were certain, would have more effect, in preventing the practice
of

of duelling, than the present severe laws for that purpose, which are seldom put in execution.

I have taken the liberty to suggest the above hints, merely from the hope, that they may be the means, of suggesting better to others. The criminal laws of England, evidently require, revision and reformation in many respects, particularly the laws respecting debtors, which seem to have been dictated, by the avarice and cruelty, of the rich and the powerful; and which, contrary to every idea of equity, and the very intention of political society, in many cases, devote the debtors to the will of their creditors, who by this means, become judges in their own cause, and every vicious and malignant passion is allowed full play and scope. A reformation in this case perhaps, is not however to be expected, till the nature of credit, and the principles which influence it, are better understood. Sir James Stewart *, in his principles of political

* Vol. ii. p. 130, says the progress of credit has been very rapid since the beginning of this century. This has been almost entirely owing to the mechanical combinations of trading men. Law-givers

political œconomy, candidly owns, that he is unacquainted with them, and succeeding writers, have thrown, very little light on the subject.

Reparation of the injury, or redress to the injured, in many cases, is entirely neglected by the English criminal law ; and what if possible, is still more unjust and absurd, the injured, are still further injured ; by being obliged, to be at the expence of the prosecution. This, is giving additional bitterness, to the cup of adversity. It is counteracting the very intention of political society, which is to protect and assist the weakness of the individual, by the united strength and powers of the community, and an unjust attempt, to make the poor and weak individual, when still further weakened by injustice, protect the community.

I have supposed that all the fines were paid to the givers have hitherto had but imperfect notions concerning the nature of it. And there still remains, in the womb of nature, some mighty genius, born to govern a commercial nation, who alone will be able to set it on its true principles.

public,

public, on the presumption that the public, were at the expence of the prosecution and the retribution of the injured, whether the fines amounted, to the necessary sum or not. In the case of murder, no redress can be given to the injured person. In every other instance there may, though not always adequate to the injury. He who unjustly loseth an arm, is as much an object of pity, compassion and redress, as he, who loses a sum of money. If his livelihood depended on the use of his arm, it would greatly aggravate the injury, and pecuniary assistance, is evidently necessary. But though that was not the case, he would still be entitled, to a compensation in money from the public, as it could not restore to him, the use of the arm he had lost. However in this case, a distinction should be made, and the retribution proportioned, to the rank of the sufferer ; for though a poor man's arm is as useful to him, as the arm of a duke to its owner ; yet, the sum of money, that the former might regard as an equivalent ; the latter might esteem, a most insignificant trifle.

As evidence is the basis, on which all our rights are supported, all security rests ; it is of the utmost importance to mankind, that it should not be misapplied ; be employed to subvert justice, and overturn those rights it ought to support, and it therefore becomes necessary, to use every prudent precaution, for preventing so dangerous, so fatal an effect. With this view, wilful perjury, in some countries as France, has been made a capital offence, in most cases ; in others, as Britain, it is capital in no case ; but may be punished by fine, imprisonment, &c. It has been often proposed, that the law of retaliation, should take place with regard to the false accuser ; but never so far as I know, with respect to the perjured judge, or perjured evidence ; yet, I imagine, no mode of punishment, is so well adapted to this species of crime, as the perjurer being subjected, to the same loss, pains and penalties, which he intended, the innocent should suffer.

Perhaps, no oaths should be legally administered, but those required of judges and evidence, and certain oaths of compact, as his Majesty's coronation oath, and

the oaths of allegiance. Allowing purgation by oath, seems to have been a device of knaves, for eluding justice, and the laws of their country. This expedient, may indeed have some effect on those, who may have infringed the law in some trifling particulars, but the hardened offender, will make no difficulty of per-juring himself, when by that means, he can promote his private interest, and will regard it only, as a means of eluding punishment. The torture in no case, should be employed; governments and laws, founded on justice, do not require, injustice to support them*.

Custom, should be regarded as law, if the custom is general, and the most sacred of laws, as having, the undoubted approbation of the community—Law, that can justly be abrogated only, by the same power that created it. But, it is the present, not any former general custom, that is to be regarded as such; for

* Vide what the Marquis of Beccaria has wrote on this subject in his excellent *Essay on Crimes and Punishments*.

what may be for the good of the community at one period, may prove injurious to it at another ; and diffuse, is the repeal of custom.

The doctrine of precedent, which at present has so much weight in law proceedings, should be entirely disregarded, in the giving of judgment ; as conferring in effect, a legislative authority on lawyers and judges ; and as being in many cases, contrary to justice ; for though the decision, might have been equitable when made ; yet, the alteration which time may occasion, in the manners and circumstances of the people, may render a repetition of it, or a similar judgment, highly injurious and unjust. A judge, in his judicial capacity, should pay no respect to authorities ; and be influenced, by law and equity only.

None, but those who have a just right to make laws, or such as they may appoint for that purpose, can have a just right, to alter, expound or interpret them.

In expounding the laws, no regard should be paid, to what has been called their spirit, or the intention of the legislator, at the time they were enacted, if
their

their spirit, or that intention, was contrary to justice; or, though agreeable to justice at the time, if rendered otherwise, by a subsequent alteration of circumstances. That action, which unnecessarily diminishes, the happiness of another, is unjust; and that law, which detracts, from the general prosperity and happiness of the community, cannot be equitable.

Were these and similar principles adopted; law and equity, I imagine, would become synonymous terms; mankind, might enjoy all the happiness, of which their nature is susceptible, and according, as this coincidence is more or less perfect, the political establishment will be more or less perfect, and contribute, more or less, to the felicity of those who compose it.

SECTION

SECTION III.

Of different Forms of Government.

MONTESQUIEU, divides government, into republican, monarchical, and despotic, and has assigned to each, a different and particular principle, which, he says, should influence their respective laws and regulations : and on these supposed principles, he has created a system, specious indeed in appearance ; but which, I must confess, seems to me, altogether destitute, of any solid foundation. However, as it has been honoured, with the general approbation of Europe, it is not without some degree of reluctance, as well as great diffidence, that I hazard such an opinion.

The nature of government, he says, differs from the principle of government ; and that the laws, necessary
for

for the support of the government, should be relative to the one, as well as to the other. Nay he says, they flow from the principle, as from their source. On this supposition, as a basis, this stupendous fabric rests ; which, though well suited to the superstructure, appears not, to me, agreeable to fact, to reason, and the nature of things ; for I imagine, it is impossible to conceive any law, necessary for the support of any government, which the nature of that government, does not point out and dictate, as requisite for that purpose.

By the principle indeed, one would imagine he means only, that disposition of mind in the members, which the nature of each government points out, as most conducive to its support.

Virtue, he says, is the principle of republics. Virtue in a republic * he defines to be, Love for the republic, and † love of the laws, and of our country. ‡ He says, a love of the republic in a democracy, is

* L'Esprit de Loix, Book v. ch. 2.

† Book iv. ch. 5.

‡ Book v. ch. 3.

a love of the democracy ; and love of the democracy, is that of equality ; it is likewise, he says, a love of frugality. Thus, he gives two different and distinct meanings, to the same word, the latter of which, the nature of the government, in no respect, necessarily implies or requires : equality, and equality of legislative power only ; being necessary, either to constitute, or support a perfect democracy. The antients, he says *, when this principle was in full vigour, performed things unseen in our times ; and such as are capable, of astonishing our little souls. From the manner in which he expresses himself, it would appear, he imagined, that the love of equality alone, restrained the ambition of the individual, and that for this reason it was necessary, to impress it very strongly on his mind. But this in general, was far from being the case. The antient republicans, as individuals, were by no means deficient in ambition, which was restrained only by the laws, and the well-founded jealousy and dread, of their fellow-citizens,

* Book iv. ch. 4.

who were ready and willing on most occasions, to maintain their just rights, to support that supreme power, that government which they enjoyed, and in which, each member was equally interested, as each, had an equal share. Against foreign enemies, the motive was still stronger, to exert themselves in support of their government or country; as in those times, there was no alternative on being conquered, but death, or a state worse than death, the most wretched, the most abject servitude.

Virtue*, he says, is likewise, the principle of an aristocracy; though not so absolutely necessary, as in a democracy. If by virtue he here means, love of equality, it is evidently inconsistent, with the nature of the government. If by virtue he means, love of the government, of the laws and constitution; that disposition of mind is certainly, the most favourable for supporting every form of government, good or bad; but is not to be expected in the latter, from those who suffer under it; though the rulers indeed,

* *L'Esprit de Loix*, Book iii. ch. 4.

may possess it in an eminent degree, may be sufficiently fond, of their power and political advantages. Different dispositions of mind, interests and inclinations, must influence, the rulers and the ruled, the sovereign and the subject, unless the advantages are mutual, or when each member, is at the same time, sovereign and subject, as in a perfect democracy. This very necessary distinction, has not occurred to him, or at least, he has not taken notice of it, and has supposed it necessary, for the majority of the community, if not the whole ; to be actuated, by one disposition of mind, which disposition of mind he has called, the principle of the government. Virtue, or love of the constitution and laws, is the disposition of mind, which ought to influence, to animate, the members of an aristocracy, according to his doctrine. Yet it is evident, that in many instances, that cannot be the case. It may influence the oppressors, but neither can, nor ought, to influence the oppressed.

Political virtue in an aristocracy, if it has any meaning, according to his definition of political vir-

tue, can signify only; that the tyrants, should love the tyranny.

However, as occasion requires, he evidently employs the word virtue, under other meanings, besides those already mentioned. He makes * it consist in probity, and says, there is less occasion for it, in a monarchy, than in a republic; but, expresses himself so dubiously, that one is at a loss to discover, whether he means that it is less necessary, in the monarch, in the subjects, or in both. At one time, he seems to mean the subjects; at another, the monarch; yet virtue or probity, certainly in no case, can be more requisite, than in regulating the actions of one, who thinks himself superior to the laws, who enacts them, and commands their execution. If by virtue is meant in this case, that the monarch, should love the government and laws; should love this power; the nature of man, leaves us no reason to apprehend, that he would be deficient in that respect.

Ambition ‡, he says, is pernicious to a republic;

* *L'Esprit de Loix*, Book iii. ch. 3. ‡ Book iii. ch. 7.

but, that it is * the misfortune of a republic, when there are no more intrigues.

Fear, he says, is the principle of despotism——not certainly, of the government or despot——for was he afraid, to exercise, assert and maintain his power and authority, the government evidently could not subsist.

False † honour, he says, is the principle of monarchy. The disposition of mind, which ought to influence, both sovereign and subject, he in this case, seems to mean.

This honour ‡, he says, has its fixed laws, and constant caprices. I frankly own, that it is above my abilities, to reconcile these assertions, which seem to me, to imply a palpable contradiction. This § honour, he adds, is the prejudice of every person and every rank; and says ||, in the school of what we call honour, the virtues we are taught; are less, what we owe to others, than to ourselves: He says it judges, of the actions of men; not as good, but as shining; not as

* L'Esprit de Loix, Book ii. ch. 2.

† Book iii. ch. 7.

‡ Book iii. ch. 8.

§ Book iii. ch. 6.

|| Book iv. ch. 2.

just,

just, but as great ; not as reasonable, but as extraordinary. This honour, he says, is a sophist, which excuses bad actions ; if attended with any circumstances, which appear noble, splendid or brilliant. That it readily allows of gallantry, when united with the idea of conquest, that is seduction ; and it equally readily admits, of adulation, craft and cunning, &c. &c. &c. Heaven and earth ! what a vicious kind of education, is this he recommends, as necessary in monarchies ? What a monster, is this false honour ? It is vice, authorized by, and decked out, in all the tinsel, all the tawdry, gaudy trappings of fashion. It is the genuine, and unambiguous offspring, of vanity and folly. What a monster, would that monarch be, who was actuated by no other motives, restrained by no other ties ? At once, an object, of ridicule and detestation. How despicable, how depraved, how vicious, subjects, influenced only by vanity, by whim, by folly, and by vice ? who sacrifice, the substance for the shadow ; the justice and merit, to the splendor of the action ; and who regard, the pursuits
of

of vanity and circumvention; as the only business of life. Happily for these countries, in which this mode of education, this system of morality, takes place even in part; that there is another principle, inherent in human nature; which, must powerfully counteract the effects of it, when carried into practice. That it is the interest of all mankind, to oppose it, and punish those, who practise it; for one villain, will not carry his complaisance, and affection for villainy so far, as to forgive another, for circumventing and injuring him; and though some, may approve of it in theory; they will generally find in practice, to their fatal experience; that VICE, is FOLLY.

Let us compare, he says *, what the historians of all ages, have said concerning the courts of monarchs; let us recollect, the sentiments of people of all countries; in respect, to the wretched character of courtiers. Ambition joined to idleness, baseness to pride, a desire of obtaining riches without labour, and an aversion to truth. Flattery, treason, perfidy, violation of engage-

* L'Esprit de Loix, Book iii. ch. 5.

ments,

ments, contempt of civil duties, fear of the prince's virtue, hope from his weakness, but above all, a perpetual ridicule, cast upon virtue; are, I think he adds, the characteristics, by which most courtiers, in all ages and countries, have been constantly distinguished."——These, are men of honour——And he justly observes, “that it is extremely difficult, for the leading men of the nation to be knaves, and for the inferior sort of people to be honest; for the former to be cheats, and for the latter to rest satisfied to be only dupes.

This honour, he says, is the principle; which characterizes and distinguishes, a moderate monarchy, from a despotic government, which restrains the power of the monarch, and secures fixed and established laws to the subject.

This doctrine, so far as I know, has never been controverted, except by some trivial observations of Voltaire, who has not attempted, to establish any other in its stead, or to ascertain the cause, which restrains the hand of tyranny, in an absolute monarchy.

Yet,

Yet, in my opinion, no doctrine can be worse founded, for honesty, is the worst qualification a courtier, as a courtier, can possibly possess; and honour, destitute of honesty; false honour, founded on avarice, vanity and an exorbitant desire of power, forms the most abject, the most obsequious tool, a despot can possibly employ, to enslave, to oppress his people, or to perpetrate, any species of villainy: for those influenced by it, will readily, sell their fellow citizens, and fellow creatures, to their master; and regard it as their greatest honour, as their highest felicity, to be employed in his service, and to be distinguished, as his creatures and favourites.

Cardinal Richelieu regarded an honest man, as not proper for the service of a monarch, and Montesquieu himself acknowledges *, that there is nothing, this honour so strongly inculcates, as submission to the prince's will.—But he adds, this honour tells us, that the prince, should never command a dishonourable

* L'Esprit de Loix, Book iv, ch. 2.

action; that is, an action, contrary to this false honour, to vice, vanity or whim.

To this whimsical honour it is owing he says, that the virtues are, just, what it pleases, and as it pleases. In a word, this honour is just, what the caprice of the monarch, and his tools or ministers, what the fashion of the court, please to make it; and those who imagine, that an absolute monarch, will be bound by so feeble, so slender a tie; a tie, not founded in nature, as any former caprice, contrary to his present inclination, must be most egregiously mistaken, and in relying on it, for the support and security of their liberty, of their natural and just rights; will soon be undeceived, and find that in this case, they have been trusting to a broken reed: besides, it is an absurdity to suppose, that there can be fixed and fundamental laws, when the government is established, on no other basis than force; when the monarch at pleasure, can overturn, both laws and tribunals——when his caprice alone, is the law, and his favour, the standard of public esteem.

It would be a practicable, but a disagreeable undertaking, to point out, many other contradictions and absurdities in this work ; concealed, under a wonderful display, of learning and ingenuity ; disguised, by a most artful arrangement of the materials, fallacious similitudes, and the employing of the same words, as the doctrines require, in various, and different significations. The Spirit of Laws, is indeed, literally and in fact, what its motto announces it to be, *Prolem sine matre creatam*, as having no foundation at least, either in nature, or in reason.

The ingenuity, learning, benevolent and humane intentions of the author, which are every where, conspicuous in his works ; make any defects, of his judgment and doctrines, the more to be regretted ; but these circumstances likewise, make them the more dangerous ; extends their influence, power and effects ; and renders the detection of them, of the greater importance to mankind.

On a future occasion I may perhaps, examine some of the doctrines which appear to me in that light, and
if

if thought necessary, bring further proofs, in corroboration; of what I have already advanced. For the present I shall rest satisfied, with the arguments already employed, and having attempted to overturn the prevailing system, I shall next briefly endeavour, to point out the nature of different governments; and from their nature, to discover, wherein they are defective, and of a pernicious tendency; and by what means, they may be improved in these respects: without any intention, of pointing out those laws, means or regulations; whereby despotism, cruelty and oppression; may be rendered, more perfect and permanent. Not those laws, which the nature of the government, unless good, point out as necessary for its support, but for its improvement; and this will be the easier accomplished, that I have already endeavoured to prove, that justice, (of which benevolence, as it is expected and ought to be reciprocal, is only a modification) is the only bond of voluntary union, and consequently ought to be, the only cement of society; and, that I have shown, from the law of God and na-

ture, that promoting the general good of the society, without violating the rights of others, ought to be the principle of every government. In how far, any government is defective in these particulars; it is evident, that in so far, it must involve the society, in distress and misery.

When the supreme authority, or the power of making the laws and appointing officers for executing them, is lodged in the community at large; each member, having an equal share in it; that form of government, is denominated a democracy——when that power is vested, in a few of the members of the community; then, it is an aristocracy——when in one, a monarchy.

In one or other of these forms, or in certain compositions or modifications of them; must all government, necessarily consist.

A democracy, when the state is so small, as to admit every member without inconveniency, to give his suffrage in person; is the most perfect, of all governments: for the supreme and legislative power, being
in

in all cases, lodged in the collective body of the people, each member having a vote in it, it is evident that justice or the general good, must be the intention of every act; law or regulation; and other circumstances being equal, every other form of government, is more or less perfect; the more or less affinity, it has to that of a perfect democracy.

In this form of government, the interest of the individual is so happily, so intimately and so obviously blended and united, with that of the community; that the individual in this case, in pursuing his own private happiness, must generally, promote that of the public; and every one, even those of weak judgment, who are commonly, more under the influence of passion and prejudice than of reason, must be convinced; that in preserving government from violation, from the unjust attempts, of their fellow citizens or others, are defending their own just rights, their own power and privileges, and pursuing their own happiness; which circumstance, must have a very powerful tendency to render abortive, the ambitious attempts of such, as are
more

more vicious, more foolish, and more daring than the others, by unavoidably terminating, in their own ruin.

In this form of government, there is no danger in the supreme power, acting without intermission or interruption if necessary; and, if any bad laws are enacted; from passion, prejudice, misinformation, misapprehension or any other cause; the pernicious effects, are soon felt and soon remedied.

Some of the regulations proper for this form of government, I have already mentioned, in the beginning of the foregoing section; others, will be mentioned hereafter.

As a democracy, under proper regulations, is the best of all forms of government; so a perfect aristocracy, is the worst.

Aristocracy, differs in no respect from monarchy, but that in the latter, there is one tyrant only; whereas, in the former, there are many: and in how far it is easier, to satisfy the wants and inclinations, to obey the will and the caprice of one, than of many; in

so far, is the latter form of government, superior to the former.

If in an aristocracy, a combination of despots ; renders the particular situation of each, more secure, with regard to the attempts of their fellow citizens, or the people ; they are exposed, to dangers not less fatal, from each other ; a circumstance from which, monarchy is exempted.

Despotism, whether regal or aristocratical, depends, on the violence of the few, the timidity of the many, and the ignorance, folly, and vices of the whole.

The slaves who are oppressed, are not less culpable ; than the tyrants, who oppress them. It is their duty to assert, vindicate and maintain those rights, which, as human creatures they are justly entitled to enjoy, by all the laws of God and nature. Nor are the oppressors, more happy than the oppressed. It involves the whole community, in misery and wretchedness. It debases human nature, prevents the acquisition of knowledge, depresses, or rather annihilates genius ; and every exalted, every noble, and generous sentiment

timent or exertion of the human mind. Man, becomes the enemy of his race ; oppresses, and is oppressed by turns. Now, abject, mean, and servile, as the beasts of burden, basely fawning, and seemingly courting the yoke. Now, haughty, assuming, bloody and rapacious, “ more fierce than empty tygers, and “ the roaring sea.” At all times, suspicious, crafty, cruel, insidious and revengeful ; society, becomes a scene of horror, meanness and infamy ; and consists only, of slaves, robbers and murderers.

In such governments, every one is the slave of his superior, no one is in safety, and the greater the power and the riches, the more dangerous the situation. The people, massacred by the monarch, assassinate, the tyrant, in their turn.

This, is at once, the most miserable and the most insecure, of all forms of government. None, are so liable, to frequent revolutions. The monarch, is under the necessity of murdering his subjects ; as otherwise, the subjects would murder the monarch ; and being sparing of blood, in such governments, is equally productive

productive of revolutions, as excess of cruelty. No one is happy, safe or satisfied ; every one knowing his danger, wants to change his situation, for some other, he thinks more secure ; and is frequently emboldened in his attempts, by preferring death, to the wretchedness of his present condition. By this form of government, the interest of the individual is very little connected, with that of the community ; and the ambition and wickedness of the few, involve the whole in misery.

The situation of the monarch, more than that of his subjects, is by no means to be envied ; deprived of every rational enjoyment, and forced by the circumstances of his situation, to the commission of the greatest enormities, he becomes callous, to all the finer feelings of the soul ; and entirely insensible, to the sublimest of all pleasures, the pleasure of doing good—is involved in the profoundest ignorance, as those who surround his person, are studious, rather to misinform, than instruct him. They cherish his vices, and minister, to his weakness and prejudices ;

from the hopes of profiting by them——By augmenting and working upon, his hopes and fears; he soon becomes, the mere tool of his ministers, who rule in his name, till their enormities or their riches, induce him to massacre them. Time become oppressive to him, to beguile his languid hours, he devotes himself to sensual pleasures, as the only he is capable of enjoying; to wine, to women, to herbet, tobacco, and opium; but excess, soon occasions satiety; and his enervated relaxed habit, makes him then, feel his afflictions, with redoubled poignancy. He becomes in effect, a state prisoner, confined to his palace for life; and being surrounded, by those who dread and consequently hate him; being destitute of any one, in whom he can confide; having reason to fear, even his wives and his children, he is perpetually oppressed, with the deepest and cruelest anxiety; and is in reality, in continual danger of assassination.

As despotic is the worst of all species of government; every other form of government is more or less defective and prejudicial; the nearer, it approaches to this.

this. However, even this form of government, is preferable to anarchy, to a state of nature; and those, who from ignorance or other circumstances, are either unacquainted with, or incapable of a better; on every revolution, or dissolution of it; after murdering their former despot, restore the government.

Religion, sometimes, controuls even despots; and those, whom neither humanity, reason, or their real interest can restrain, are overawed, by the phantoms of the imagination. But this security, is both feeble and precarious; as depending, on the disposition of the despot, and the nature of the religion; and is commonly only, one species of tyranny counteracting another.

Since Montesquieu wrote, it has been the universal opinion, that under such forms of government, the hand of violence may be restrained, by honour, by false honour; and the interposition of a nobility, or what he calls, intermediate, subordinate, and dependent powers. That honour, cannot be productive of this effect, I have already endeavoured to prove.

That a nobility, who derive from the monarch solely, those honours and that property, which alone distinguishes them from their fellow subjects; and of which, they may be deprived at pleasure, by the same power, who conferred them——a military nobility——the offspring, dependents, and creatures of a court, may be the most apt instruments for effecting the purposes; but evidently, not for restraining, the power of the monarch——for enslaving their fellow citizens and fellow creatures, not for asserting and maintaining their just rights, is sufficiently obvious.

Ye subjects of absolute monarchs, imagine not that the power of your tyrants, is limited by law or custom; indulge not the pleasing thought, let not, false appearances deceive you. The terms absolute, and legal restriction, signify powers, which are altogether incompatible; and any supposed conjunction of them, must necessarily, imply a palpable contradiction. If your sovereign, admits of no controul, acknowledges no superior on earth, makes, annuls, extends, restrains, suspends or executes the laws at pleasure;

sure; it cannot be, to established laws or customs; and far less, to the whimsical suggestions of a false principle of honour; or a dread, of the most obsequious and servile of his slaves; that ye are indebted for that security, and those privileges, ye enjoy——No——it is to your *INDUSTRY*, to your *INDUSTRY* alone; that ye are indebted, for that security and these privileges——to that industry, which ministers to his wants; which adds so much, to the gratification of his desires; and which on many accounts, it is so much his interest, to cherish and preserve. Though this thought is new, it is not the less certain. Voluntary industry and security, are intimately and mutually connected; they reciprocally, depend on each other; and the one, will not subsist long, without the other; for none, will labour voluntarily, without a prospect of enjoying the fruits of it; and if possessed of that security, there are few, but will exert themselves in that manner.

At the same time, that it is attended with less trouble and danger; the monarch, derives more benefit, from
voluntary,

voluntary, than compulsory labour ; from subjects, than from slaves ; and though they, nor their ministers, seem in any case, to have regarded this matter in a comprehensive light ; and far less, according to its full scope and extent ; yet the latter, have often viewed it partially, and in particular cases have seldom failed, to represent to the monarch, that such an act of injustice and oppression, would prove prejudicial to his credit ; or diminish, some particular branch of his revenue ; and the most determined tyrant, though he may commit many particular acts of injustice ; if not perfectly insane, will seldom on this account, proceed, in an industrious country, to general acts of violence and outrage ; from a conviction, that in injuring his people in these respects, he must materially injure himself.

Industry, is favourable to civil liberty, not only on this account ; but likewise, as rendering any invasion of it more dangerous ; for industry, by increasing the riches and enjoyments of the people, increases their inclination, and power, to assert, preserve and defend

their just rights ; procures those necessaries, that tend to invigorate the body, and fortify the mind ; while poverty, want and distress, and that nerveless abasement, which despotism occasions, by preventing useful industry, security and plenty ; debases the mind, depresses the spirits, and renders the poor, oppressed, indigent wretches ; incapable, of any vigorous exertions, either, for the improvement of their country ; or the vindication of their natural rights. It is observable, in industrious civilized states, that such of the people, as derive an ample subsistence from their industry ; sometimes commit outrages and violences, and proceed to extremities, proportioned rather, to the vigour of their constitutions, and that impetuous, enthusiastic fervour, zeal, and courage ; which an abundant, and rapid flow of animal spirits occasion, than to any real grievances ; while, such of their fellow citizens, as are really in indigence, and labour, under the pressure of misfortunes ; commonly, either, vent their sorrows, in weak and unavailing complaints, and pine away in secret, unpitied and unknown ; or
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exert themselves, in a manner too feeble and ineffectual ; to attract the attention of any, but the charitable and benevolent. Their weak spirits, in place of bursting out, into acts of violence ; rather inclines them, to conceal their misery ; which often, can alone be perceived, in their wan and meager countenances, their unassuming, meek and modest demeanour, and that penetrating, expressive look, the genuine effusion of the soul, which far surpassing the power of language, fascinates the beholder——Melting charity, ministers to their wants——Pity, eyes them with compassion ; and in secret, drops the tear——The bustling world, regards them not——their weak complaints, are little heard amid the crowd ; and extreme misery alone, can urge them on, to desperate deeds. They seldom therefore, very seldom, make any vigorous exertions, for their relief ; or engage, in any outrages ; unless, at the instigation of such, as are full fed, easy, or voluptuous ; who sometimes regard, destruction as a pastime. These outrages however, are little to be dreaded, under a good government ; and
they

they are generally the occasion, of some salutary and proper regulations, in a bad.

A state, more hostile or more unhappy, than that of Europe, while the feudal system subsisted in full force, can hardly be conceived ; when voluntary industry, from false notions of justice, honour, or utility, was ever discouraged ; sometimes, expressly prohibited ; always, held in contempt. In this species of government, or aristocracy ; the people, were only the slaves, or the tools, of the feudal tyrants. The husbandmen, or villains, as they then denominated them, were sold with the soil ; and the remainder of the community, the clergy and a few others excepted, were under the cruel necessity of starving, or of becoming the abject tools and instruments, of the violence, rapine, and oppression, of these rapacious, and blood-thirsty tyrants ; there being then, few or no means, of acquiring a livelihood, by honest industry. The feudal lords, were really in a state of nature, with regard to each other ; and waged, perpetual war among themselves ; the power of which, they

claimed as their prerogative; and either, eluded the force of the laws, or defied them. These wars, which have justly, and emphatically been denominated, the deadly feuds, proved the more pernicious, on account of the savage brutality, and want of military skill and discipline, in the combatants. They involved mankind, in a state of the most dreadful uncertainty, tumult, oppression, and bloodshed; and, as suspicion, craft, cruelty, and revenge, the most pernicious and odious of all vices, are the peculiar characteristics of rudeness and uncivilization, these feuds, were transmitted, from father to son, heightened and inflamed with accumulated rancour, from a progressive increase of successive injuries. The barons, from the nature of the government, and circumstances of the times, were under the necessity of supporting, a rude species of magnificence, and a barbarous, or as they often deemed it, a lucrative hospitality; as, without it, they could neither maintain their power, protect their property, or what they often valued still more, satiate, their ambition or revenge. The great Earl of Warwick, is
said

said to have entertained every day, at his different manors, thirty thousand people. The petition of the elder Spenser to Parliament, in the reign of Edward II. complaining of the devastation committed on his lands, by the barons ; contains, among other particulars, the loss of six hundred bacons, eighty carcases of beef, and two hundred muttons in the larder ; and that, in the beginning of the month of May, a season in which it is presumable, there could be no great occasion for laying in a large store of salt provision. These instances, may convey some idea, of the great number of people, fed and retained, by the great barons in those times. By means of these poor people, which want forced into their service; and necessity rendered desperate, they perpetrated every species of wickedness ; committing, incursion and plunder, on the weak and defenceless, the widow and the orphan ; and gratifying their lust, ambition, and revenge, at the expence, of excess of human misery, and torrents of human blood. Of this dreadful state of society, Poland, though restrained by the example of neighbouring nations, affords a recent,

if not a present example. In this state of despotism and slavery, the morals of the people, corresponded with their manners; and our ancestors, however highly celebrated, were in fact, as much inferior to their posterity, in true honour and humanity, as in taste and in science.

The ages of refinement are indeed, the most virtuous, as well as the happiest; notwithstanding, most, if not all of our political writers and declaimers, have entertained a contrary opinion, and regarded modern luxury, as the cause of the greatest evils; of excess, of effeminacy and national weakness; and have lamented, in the most poignant and pathetic terms, the consequent degeneracy of the human race.

It is difficult, even for minds of a superior cast, to throw off entirely those prepossessions and prejudices, which were inculcated and adopted, before they were capable, of forming a true judgment. Weak minds, remain blindly attached to them, through life. It is on this account, a matter of the greatest importance, that the doctrines then inculcated should be founded
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in reason, and of a beneficial and virtuous tendency. Of these early prepossessions, perhaps there are few, religious excepted, which are more tenaciously adhered to, than that blind attachment, to the doctrines, manners, morals, and customs of the antients; which at school, we are so apt to imbibe. Yet, some of their doctrines, are fallacious and deceitful; and many of them, are by no means applicable, to the present times and circumstances; and therefore should not, be represented or adopted as such. Inuring the body, especially in youth, to excessive labour, and frequent and violent vicissitudes of heat and cold, are powerfully inculcated, as being the only effectual means for strengthening, both body and mind; and it is almost universally believed, that mankind have degenerated greatly in these respects, since the days of the antients, by not duly attending, to these circumstances. Yet, it certainly cannot with propriety be alledged, that the Greeks or Romans ever experienced, such violent colds, as the present Laplander, Greenlander, Samoides or Esquimaux——that the savages of North
America,

America, are yet enervated by luxury ; or that they do not inure themselves, to more violent extremes of heat and cold, hunger and fatigue, than ever, were experienced by the antients : besides, the manners of the present Tartars, differ in no respect, from that of their predecessors, who over-run and conquered, the Roman Empire. The natives however, of many of these countries, are remarkable for their imbecillity ; and we have no reason to think, that any of them, exceed the civilized nations, in the strength of their bodies, or the vigour of their minds. Besides, man, in infancy, is the weakest, most delicate and helpless, of all beings ; requires the most tender care, and is injured, in strength or in stature, by any kind of rough usage. This strange doctrine, however, acquired such strength, as to be carried into practice, with regard to other animals, besides the human race ; but the latter, have been the principal sufferers in this respect ; for the breeders and rearers of the former, soon perceived, that excessive cold and a spare diet, had a contrary tendency, from encreasing the strength, and the bulk of their cattle. Nay, to such

a degree of absurdity was it carried, that till undeceived a few years ago, by the writings of the ingenious Mess^r. Anderson and Boucher, it was generally supposed in this country, that certain plants, known to thrive in a rich soil, when transplanted, could not be nursed, in a situation too barren, or too much exposed ; imagining, it would seem, that it would be an advantage for them, to become hide-bound in infancy, and to have their roots, absorbers and other vessels, few and contracted.

“ Toil and be strong,” is sound doctrine ; but it is not, occasional exertions of excessive fatigue ; but the continued exercise, of moderate labour. Were there none to trust to for defence, but the idle and the sedentary, this doctrine of the antients might be enforced with some propriety and reason ; but in modern states, that very luxury, which they so violently de-claim against, as the root of all evil ; occasions that very exercise and labour, that population and plenty, which is required. Perhaps, no race of men are better qualified for war, than our modern, healthy,

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well-wrought,

well-wrought, lusty, well-fed ploughmen and artificers.

So universal and so prevalent in other respects, are the prejudices, which the present mode of education inspire; that I am afraid, I shall be suspected of a passion for paradox, when I assert, that none, of the antient republics were free, that the antients were totally unacquainted, with every species of free government, and that those, which they esteemed the most perfect democracies, were in reality, aristocracies. Yet, the fact is incontestable; the antient governments were aristocracies, the most cruel, oppressive and tyrannical, that possibly can be conceived; military governments, in the utmost purity and perfection; in which the soldiers or tyrants alone, were free; and the people, though their military despots denied them that appellation, enslaved. According to an enumeration, said to have been made by Demetrius Phalærius, there were in Athens twenty-one thousand citizens, ten thousand strangers, and four hundred thousand,

four hundred thousand slaves *. Niceas, the son of Niceratus, employed 1000 slaves, and Hipponius 600, in the mines at Athens †. Cæcilius a Roman, was possessed of upwards, of 4000 slaves ‡.

In governments then, such as those of Greece and Rome, where all labour was compulsory, and the labourers, rendered incapable of holding property; it is in vain to look for, or expect liberty.—The people in such cases, being in the most wretched state of debasement.

From the narrow and circumscribed light, in which we have been used to view these matters, proceeds all mistakes, with respect to the application of the maxims, policy, and manners, of the ancients, to the present times; and we are apt to regard, the people in these states, merely as beasts; because their tyrants used them as such, and named them slaves; and not to think them entitled, to any of the rights or privileges of human nature; and as these states depended, on the idle alone

* Athenæus, L. 6. C. 20. † Xenophon on the Revenue of Athens.

‡ Plin. L. 33. C. 10.

for their defence, on those soldiers or freemen, whom the slaves fed and clothed ; (as prudence or conveniency seldom admitted, of employing the slaves in that manner) the doctrines they inculcated, and the institutions they established, for inspiring their freemen or soldiers with a military spirit, and inuring them to military exercises, might be admirably adapted to their circumstances ; yet, in no respect applicable, to any of the members of a modern state ; except perhaps the opulent, and the standing army ; who are indeed, frequently idle or ill employed, when not engaged in military exercises.

Ye, who are soldiers by profession ; and ye, who from the opulence and advantages ye enjoy, are the natural and constitutional defenders of your country, and guardians of her just rights ; far be it from me, to wish, that ye should always, “ in the primrose path of dalliance tread ;” and waste your hours, in sensuality and sloth.—No, intrepid warriors ; rather, may you inure yourselves to deeds of hardihood, to those exercises, and that manner of life ; which may qualify you most, for the service of your country.

By

By modern luxury and refinement, I mean not, brutal sensuality and excess. — Drunkenness, voracious gluttony, sloth, and excessive venery, are the vices, of savages and barbarians.—Refinement and real luxury, are the greatest enemies to excess: for excess is destructive, of true pleasure and enjoyment.—By luxury I mean only, refinement in the conveniencies, and ornaments of life.—I am, no advocate for excess.

Ye subjects of France, if ye enjoy more liberty and greater security, than your neighbours of Spain and of Portugal; it is to your superior industry, you are indebted for it: it is to this circumstance alone ye owe, the superior mildness of your government.—Ye Poles and ye Russians, if ye wish for the same indulgences; pursue the same path, as the only sure road for obtaining them.—For industry, modern luxury and refinement, in place of being the bane, as has been supposed, are in reality the principal cause, as well, as the surest support of liberty.

The industry and despotism of Bengal and some other oriental countries, may perhaps be regarded, as

exceptions to the doctrines I have advanced ; but it is to be observed, that there is very little industry in Bengal, in proportion to the number of inhabitants ; that the fertility of their soil, rewards in a very ample manner, the trifling labour they bestow upon it ; and that it has been usual there, as well as in Russia and some other despotic countries ; to procure payment, of the manufactures and produce in advance ; by which means, they obtained that security which the laws denied them. It is likewise observable, that any privileges or property they enjoy ; as having the lands leased to them, &c. they owe to their industry.

The liberty enjoyed under despotic governments, whether aristocratical or monarchical, will be found, other circumstances being equal, to be in proportion, to the industry of the people.—Genoa, affords a pertinent example, of the oppressions of aristocracy, being moderated by that means ; and the government of the industrious Hollanders, tho' moderate, is now likewise, in many respects aristocratical.—It is likewise observable, that as the arts advanced in their progress ; the feudal tyranny, proportionally declined.

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In the pursuit of industry, and its concomitants, arts and sciences; the mind acquires new vigour, its powers become expanded and enlarged, profound ignorance is banished; and with it, all the blind fury of enthusiasm, and horrors of superstition.—Mankind, become rational creatures; refine more and more, in manners and in morals; and exclusive of the fruits of their labour, enjoy as their reward, the labour itself; for indolence has no relish, but when it succeeds exercise; and some pursuit is absolutely requisite for the health and happiness of man—Those doomed to sloth, are doomed to misery and——

“ In frequent yawns confess,

“ The pains and penalties of idleness.”

Industry, is the child, of peace and of justice, and the parent, of liberty, riches, and independence.—It has a direct tendency to prevent vice, war, slavery, and want, with superstition and enthusiasm, and all those phantoms of the imagination, that haunt the idle and unemployed, and which so often prove productive of much distress to themselves and to others.

If

If there is not industry in a free country, no laws can be conceived, effectual, for preventing beggary; and if that industry is not voluntary, the country is not free—for man must live, if at all, on what is given him; if he does not, on what he earns by his labour; and it was a just observation, of Lord Chief Justice Hale, that the prevention of idleness, would do more good, than all the gibbets, whipping-posts, and goals in the kingdom.

A spirit of industry, unites the interest and happiness of the rulers, with that of the ruled; of the sovereign with that of the subject—When Peter the first of Russia, laid the foundation of industry in his empire; that, in some respects enlightened, but cruel and tyrannical barbarian; had in view only, the aggrandizement, the riches and power of the sovereign; but at the same time, without either knowing or intending it; he laid the foundation of the liberty, prosperity, and happiness of his people: so intimately, so inseparably united; are the real and true interests, of the sovereign and the subject.

Ye monarchs and rulers of the earth, establish your authority, on the hearts of your subjects.—Revere their just rights, employ those powers, with which ye
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are armed and entrusted, to cherish and protect them ; and they will reward you, with love, and with gratitude ; they will regard you in these respects, as the representatives of the Almighty upon the earth ; and will esteem it as their duty, their pride, and their glory, to contribute to your felicity.—Be not deceived, by the petty and mean arts, of short sighted court-sycophants ; who flatter you, only to betray you ; who pretend great zeal for your service, but regard you in no other light, than as the dupes of their artifice, and the tools of their ambition, and will not fail to desert you, on any reverse of fortune ; who, have no other end in view, than gratifying their passion for power and riches, at the expence of humanity, and the sovereign who confides in them, and has already, loaded them with favours.—who value, any augmentation of your power, only, as it gives, a temporary augmentation to their own—who look not to distant consequences, from a full conviction, that their power can not be permanent ; and whose principal object, is therefore, to render it as extensive and effective as possible, during its continuance, that they may employ it the more efficaciously, in forwarding their
avaricious:

avaricious and ambitious views; or in other words, that they may abuse it the more.—Be not deceived by such men, they will lead you, into error and misfortune——It is not, wisdom, that characterizes them, for believe me still, “a faithless heart betrays a head unsound:” It is intrigue, political craft and cunning; the counterfeits indeed, of wisdom and of virtue; but in reality, the genuine offspring of vice and of folly.---They are distinguishable, by that servility of conduct towards their superiors, and that haughtiness to their inferiors, which betrays, a mean ignoble mind: an almost officious activity and readiness in suggesting and forwarding, illiberal, oppressive, and violent measures; and they are ever, the more importunate for favours, the more unworthy of them---Friendship among such, is only a collusive and mercenary league; and though they regard circumvention, as the business of life, as the sublimest exertion of human wisdom; they commonly fall at last, the dupes of their own artifice; and involve those who have confided in them, in much distress and calamity.

Rely not on the suggestions of such, let not passion or prejudice mislead you; but know, that the real interest
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and happiness of the sovereign, is intimately and inseparably connected, with that of the subject; and if you have any regard, for your personal safety, the peace and approbation of your own minds; invade not, the just rights of your people—remember the tyrants who have fallen by their hand, and dread their just resentment.

Know, that to act uprightly; is to act, politically and wisely—It is not only, the most effectual means for preventing, but for blunting, the edge of faction; as leaving it not even, a just pretence for opposition.—It is to act popularly, for it is to act, agreeable to the inclination of the majority, and the people when indulged, are seldom ungrateful—In a word, it is to avoid danger and distress; to acquire many, and most important advantages; to be obeyed, voluntarily and readily; and to obtain, the love, respect, esteem, and gratitude of mankind.---It is to be the sovereign, of a rich, powerful, free and enlightened people; and not, a controulor of slaves. Such a situation is certainly, infinitely preferable to that, of the tyrants of Turkey, Persia, and Morocco.

But, tho' it is evidently the interest of sovereigns, to protect, in place of injuring their people, even in particular instances, which, when palpable, seldom fail, to give a publick alarm; yet, such is the folly, the depravity of man, that, in many cases, this circumstance often proves, but a weak barrier; especially, against the violence and usurpations of those, who are possessed of much power, and are apt to be misled, by the disadvantages attending their situation, by a defective education, and by being exposed, to the machinations and misrepresentations, the suggestions and flattery, of the ambitious, the wicked, the weak, and the venal.

This defect cannot be remedied, or even palliated in any considerable degree, or liberty established on a solid and permanent foundation, but by means of a democratical government, or a government formed, on a democratical basis; for no community, state or society, can in fact be free, that is not entirely, under the influence of its own free will, and exempted from all controul, foreign or domestic; and the legislature, therefore, in all cases, is more or less perfect, as it derives, more

or less of its authority, from the general voice, and approbation of the people.

In such governments, if the state is small, and the citizens easily known, every member, ought to have a direct and immediate personal concern, in the enacting of the laws; or form, an effective branch of the legislature: but in large states, it is necessary that the people, should do that by representatives; which it is impracticable, or highly inconvenient for them, to perform in person.—Besides, a very numerous society, is on many accounts, very improper for that purpose; and tho', the pernicious consequences of bad laws, are soon felt, and soon remedied by the people, when acting directly in a legislative capacity; yet, legislation by means of delegates, is superior to it, in large states at least, as tending to prevent such laws, and that violence, confusion and anarchy, to which very large popular assemblies are incident, &c. provided, the delegates are judiciously chosen, are men of better education, more abilities and more virtue, than the generality of their fellow-citizens;—but, if on the contrary, the delegates are crafty and vicious, the government may degenerate

into tyranny, and the whole community be involved, in distress and misery.

In democratical governments, it is obvious, that it is necessary to distinguish, the fictitious, from the real voter; and to use the most effectual means for preventing, the interposition of foreigners, in the government of the state. It is likewise obvious, that delegates nominated by the people, for doing the business of the people, are really, and in fact, the servants of the public; and as it cannot in reason be supposed, that rational creatures, would invest them with power to their own prejudice, their just authority must be limited, to acting, for the public advantage.

The precise extent of the powers of delegates, has been regarded as a matter, of great doubt and uncertainty; * some asserting, that they should always act, agreeable to the instructions of their respective constituents; while others, and among these Sidney, Montesquieu,

* Mr. Hume, in his essay on the principles of Government; says, with regard to the degrees of weight, which ought to be placed on the instructions of constituents, such is the nature of language, that is impossible for it, to express distinctly, these different degrees.

quieu, and Blackstone, maintain the contrary opinion. If the principles, I have advanced are just, this difficulty must vanish; for it is apparent, that according to these, the delegate ought in all cases, to adhere to the instructions of his electors, when by that means, he can promote their particular interest, without prejudicing, that of the community. That in other respects, he should pay no particular regard to these, but act agreeable to the dictates of his own reason, unless evidently opposed, by the general voice of the people, or of a majority of the people; to which in all cases, not only his particular opinion, but that of the parliament, as the servants of the public, should in every instance yield. If they act contrary to the interest, nay to the inclination of the community, for laws otherwise the most salutary, may often prove oppressive and unjust, as well as impolitical, by being forced on the people; they betray the trust reposed in them, injure the society, and render themselves by these means, obnoxious to punishment. The great art of good government, when administered by the few, or a part of the community, is to make that, the inclination of the people, which is for the interest of the people;

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and by wise regulations, to make every one act, in the manner most subservient to the public good, while he may intend only, his own private advantage.

It is evident, that the Delegates chosen by the people, cannot justly transfer, the power of legislation to others; as they are delegated to enact laws, not to appoint legislators.

In a democratic government, in which all the members individually and personally assist, in enacting the laws, the liberty of the people cannot be endangered, from the execution of the laws being entrusted, with the same power that enacts them; as that power, is the people; tho' in some cases, it might be attended with inconveniences. But, in those governments, in which the people have delegated the legislative power, it would be dangerous to entrust those Delegates, with the power of executing the laws; as they might by this means, in many cases, adapt the laws and their execution, to their own particular advantage; might execute tyrannically, what they had tyrannically decreed; and by exempting themselves, from all obedience to the laws they make, establish in the state, an interest, distinct from, and contrary

trary to, that of the people, the nature of the government, and productive of the greatest oppression, violence and distress. It therefore becomes necessary in such states, for the legislative and executive authority, to be lodged, in separate and distinct members of the state, that the former, may not entrust the latter, with too much power; and that, they may in some respects serve, as a counterpoise and useful check on each other.

To prevent, the usurpations of the legislative power, the executive, ought to be armed with a negative power, sufficient to preserve its constitutional rights, and to repel any unjust attacks, by rejecting or preventing, edicts of such a tendency, from becoming laws.

As the executive power, requires promptitude, secrecy, vigour and dispatch; it ought to be conferred, on one individual member of the state; for however proper, the many may be, for deliberating and determining properly, they must on various accounts, be inferior to unity in these respects. This supreme executive magistrate, to prevent the disputes, faction and bloodshed, which competitions for power, at each election might occasion, ought to have the nomination of all those, he has occasion to employ;
and

and for the same reason, this office, ought to be rendered hereditary. He should likewise, be allowed by the public, a very ample revenue; proportioned to the power, the constitution, necessarily intrusts him with, and to that dignity, state and splendor, he ought to support; which, should be far superior to that, of any of the other members of the state, as this circumstance, would operate as a means of preventing, invidious and prejudicial comparisons, or the pretensions, competitions and attempts of others, from equal opulence and splendor, to equal power and privileges; and thus, for the advantage of the people, a power, in some respects monarchical, is established, in a government, fundamentally democratical.

As a still farther security to the executive power, and for the maintainance and support, of that distinction and inequality of rank, riches, and honours, which are the natural consequences of useful industry, superior ingenuity, and eminent public services,—Of that inequality, which, however obnoxious to popular envy, to those little vicious minds, who practise the mean, dishonest arts of detraction, and adopt a levelling principle, from a sense of their own insignificance, and want of merit; and

however

however contrary, to the principles of the antient republicans; and to that spirit, which dictated and enforced Agrarian laws, is essentially necessary, for the support of real liberty, and the maintainance of that industry, to which we are indebted, for the superior conveniences and elegancies we enjoy, the refinement of our manners, and the extension of our knowledge and social intercourse.—Of that inequality, which to elevated, enlightened and generous minds, proves an excitement to the noblest actions, the greatest and most meritorious exertions, and which encourages them in the pursuit, of what is useful, laudable and virtuous, it becomes expedient, that those, who are thus distinguished, should form an independent, and separate branch of the legislature; should have a distinct assembly, distinct deliberations, and distinct powers, from the house of delegates; and have a right to put a stop, to the enterprises of the people, when operating to their particular prejudice, as the people, in similar circumstances, ought to have a right to put a stop to their proceedings; and, as they are principals, not delegates, it is proper, that they should possess a power, of remonstrating or protesting, and of acting

Part I.
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acting

acting by delegates or proxies—Were they confounded with the mass of the people, and had each, the weight of a single vote only, in electing representatives, and if all the representatives, sat and voted in the same house, and possessed equal privileges; they would soon be born down and overwhelmed, by the popular torrent, which would speedily and effectually, level all distinctions—Their privileges likewise, ought to be hereditary, both to render them more valuable, and as it might be attended with danger to the constitution, were they nominated for life, or during pleasure only, as giving that power, which had the nomination or appointing of them, too much influence over them—Thus a power, in some respects aristocratical, is likewise formed, from the same cause and on the same basis; whose interest it is, equally to guard against the usurpations and incroachments of the democratic, and executive or monarchical powers, and to support the one, when attacked by the other; as it is for the monarchical, to prevent the illegal attempts, of the democratic and aristocratic; and of the democratic, to oppose, those of the monarchical and aristocratical; and for each to assist the other, against such efforts

efforts in the third, as tend, to the prejudice of the constitution; and “ thus, every branch of the civil polity, “ as Sir William Blackstone will express it, † supports “ and is supported, regulates and is regulated, by the rest; “ for the two houses naturally drawing, in two directions “ of opposite interest, and the executive, in another still “ different from them both, they naturally keep each other, from exceeding their proper limits; like three “ different powers in mechanics, they jointly impell the “ machine of government, in a direction different, from “ what either acting by itself would have done, but at “ the same time, in a direction partaking of each, and “ formed out of all; a direction, which constitutes the “ true line of liberty and happiness of the community: “ but if || ever it should happen, that the independency of “ any one, of the three should be lost, or that it should “ become subservient to the views of either of the other “ two, there would soon be an end of the constitution.”

In the house of nobles and the house of delegates, the legislative power should be solely invested—The execu-

† Comment. vol 1. p. 155. || p. 51.

tive, possessing only, a power of rejecting—An authority, merely negative. *

The supreme or legislative power, being thus lodged in the people alone, it is evident, that the monarch or supreme executive magistrate, with all his subordinates, being the creatures of the law, are consequently, the servants of the people; that all the particular privileges, they, as well as the nobles enjoy, are constituted, with a view to the public good, the general benefit only; and, that they are entitled to them, so long only, as they deserve them, by fulfilling the original end and intention of the institution.

That such a government, is in fact, fundamentally democratical; and that every government, must necessarily be so, to be free.

To render the supreme executive magistrate, the more useful to the society, it becomes necessary to invest him,

* All writers on such a form of government, have made the executive a branch of the legislative; and most of them, have made it the head of; it a most pernicious doctrine, leading to despotism, subversive of the constitution, and of those conclusions, I have drawn, from the real nature of it. *vid.* Blackstone's Comment. &c.

with a discretionary power of acting for the public good in certain cases, where the positive laws are silent; as it is impossible for any human legislature, to foresee and provide for, all possible contingences: but, it cannot be necessary in any instance, for this power to extend, to a temporary suspension of the laws, in a well regulated government; to dispensing with the observance of particular laws, in general, or particular instances, longer than necessity, than the public good evidently renders, such dispensation proper; and, in no case, to exposing the people, to the violence and outrage, of sanguinary and servile mercenaries——This discretionary power, has been denominated prerogative, and ~~as~~ it is permitted solely, with a view to the public good, it is evident, that it extends not constitutionally, to the doing of any wrong, and those who would inculcate such a doctrine, would be equally the enemy, of the monarch and of mankind.

As being the supreme executor of the laws, it is necessary, he should be at the head of, and have the disposal of, all offices, civil and military, necessary for that purpose; and consequently, that he should be the fountain of honour; for honour, is intimately connected with

with office, and from his situation, he should be best qualified, to judge of the merits of those, he employs in the publick service: however, in that, as in every other thing, he ought to pay great deference, to the public opinion, and should in no case, be permitted, to have the immediate, direct, personal command, of the navies, or armies of the state; when at sea, or in the field; but should be obliged to employ, his admirals or generals for these purposes, as it is presumable, that in general, they should be better qualified, for serving the public in these capacities, and if they abuse their trust, their conduct, may be enquired into and punished, with less danger, and less detriment to the public: for the same reasons, he should not officiate, as his own prime minister, chancellor, high treasurer, high admiral, commander in chief of the forces, &c. &c. Such a conduct might besides, by various means, endanger the liberty of the people——A monarch, personally heading his armies, has much in his power in such a situation; he may easily render himself, popular with the army; and is in a condition, for profiting of every circumstance, and seizing every
every

every opportunity, favouring his ambitious designs—A victorious, enterprising monarch, will not only captivate, the hearts of his soldiers; but his other subjects, intoxicated with the idea of national honour, will think, they cannot be too liberal, in their grants and concessions to their hero and conqueror. Of such high estimation, is animal strength, military endowments, and successful violence, with the generality of mankind.

For the same reasons, all public prosecutions should be carried on, in his name and authority; but this officer ought not to be regarded, as the fountain of justice, or law; as he has sometimes been called and represented, and should, directly or indirectly, possess, no judicial authority, in the proper acceptation of that term, except in a particular instance, which will be afterwards mentioned; every one, should be judged according to law, in an open court, by a jury of his peers, (the magistrates, usually denominated judges, assisting with their advice only, and pronouncing sentence;) except in matters of a very general and atrocious tendency, and affecting the constitution; in which, of consequence, every member of the community is materially concerned; when the
public

public at large, or their representatives, or one of the branches of the legislature, appointed for that purpose, as the house of nobles, should be judge ; the house of delegates being the accuser.

This last method is particularly proper for determining disputes, between the executive power and the people. — Was the power of judging, in every instance, intrusted with the legislature, the judgments, would not be according to known promulgated laws ; but the arbitrary decisions, of judges, who would acknowledge no controul, their will, being the law ; and the executive power, the lives and liberties of the people, would be exposed, to all the dangers of violence, doubt, caprice and uncertainty. If intrusted with the executive, it might prove equally prejudicial to the people, and subversive of the constitution ; as partial, unjust judgements, might be executed without delay, and without controul ; and the legislative might become by this means, merely nominal, and of no effect — — The house of nobles, may perhaps, in certain cases, be permitted with propriety and advantage, to judge on appeal, in the last resort, in matters of arbitration, or civil disputes,

putes concerning property ; as from their high rank, and great opulence, being less liable to undue influence, partiality, or local prejudices, than less numerous, and inferior courts : but they should possess, no power of judging in criminal cases, except, with respect to their own peers, who might otherwise unjustly suffer, from popular envy and prejudice ; and in the case, of parliamentary impeachment, formerly mentioned. To render the judges, the more independent of the executive power, their salaries should be fixed and determined, they should be appointed, during life or good behaviour, and should be removeable only, at the desire of the parliament or people.

As there are particular cases, which fall within the penalties of the law, and which from the peculiarity of their circumstances, cannot be executed without injustice, it is necessary, that some of the members of the state, should be invested with a power of pardoning, or mitigating the severity of the law, in such cases ; and, as it would be inconvenient for the legislature, or people at large, to exercise such a power ; perhaps, it cannot be entrusted in better hands, than that of the monarch ; if

he pays due deference, to the voice of the people, the representations of the jury, and the opinion of his council and the judges.—In this respect indeed, he may be said to act, in a judicial capacity ; but this circumstance, and his power of pardoning others, does not imply, that he is incapable of acting illegally, or impowered to judge, in his own cause ; and this power, should not extend, to cases of parliamentary impeachment, as such a power, might endanger the constitution.

The proclamations of the monarch, should be deemed legal and constitutional, when the public good renders them necessary ; and when they neither tend to establish new laws, or act in opposition to such as are established.

The monarch, should have no particular and exclusive authority, in matters relating to commerce.—Nor should he be invested with the power of making war or peace, of entering into treaties, leagues or alliances, with foreign states or princes ; or even, of nominating ambassadors, tho' he may, perhaps, be permitted with general advantage, to grant safe conducts, and issue letters of mark and reprisal, when duly demanded, as acting in self defence is not wantonly engaging in war.—Man-kind

kind should not be sacrificed to the ambition, the avarice, the vanity, or the caprice of the monarch.—Deaf, to the cries of the widow and the orphan, to the voice of humanity, blind, to their real interest, and that of their people, in what dreadful calamities, have monarchs, involved the human race? How often have they deluged the world, with the blood of their fellow creatures?—Monarchs, ought not to have the power, of involving mankind in misery, as they are impelled, by the impulses of fancy, passion, or appetite.—The good would not desire it, and the vicious ought to be restrained.—Neither ought they, to have so much influence in foreign affairs, as to make the succession to the crown, &c. a matter of such great importance to foreigners, as to occasion, their interfering in domestic concerns, on that account.—Impeaching and punishing the ministers of the monarch, is no adequate security against the evils, which may proceed from this cause, nor is the dispatch, that sometimes may be requisite, a sufficient reason, for intrusting any individual, with a power of such momentous import; and which, on various accounts, would be particularly dangerous to the constitution, and the liberty

of the subject. After a war is once commenced, it is no difficult matter to influence the passions of the people in favour of it; the pride, pomp, and circumstances attending it, the private interest of some, and the operations of the enemy, all conspire, with the arts and corruption of the court, to inflame the people, forward the ambitious views of the monarch, and save the minister.

This magistrate, being constituted not so much for transacting the executive business of the state, as for appointing officers for that purpose; it is obvious, that he should not be accountable for the execution of the laws; unless he exceeds the limits and intention of the institution, by acting in an inferior capacity; as his own prime minister, general, admiral, &c. and under that pretence, endeavours to screen his officers from justice, and thereby endangers the constitution and national safety; in which event, he must abide the legal consequences; for the executive power being evidently the creature of the law, and subservient to the legislative; as the legislative is, to its constituents; the legislative of course, must and ought to have a power of examining, in what manner, its laws have been executed, and to punish the delin-

delinquents. Such examination and punishment, in the case of the supreme magistrate, would be equally disagreeable and dangerous; but the fault would be entirely his own, and the public good might render it absolutely requisite; and his negative on any legislative resolution for this purpose could, in justice and sound policy, be of no avail; as being bestowed to protect his constitutional rights, not to support his vices or usurpations.—Nor is this doctrine without example, but is founded on precedent and experience, particularly, on the recent case in Britain, of the legislature deciding on the merits of the conduct of James the II. But, tho' the legislature may judge, dismiss, or punish the officer, in certain cases; yet, it ought to have no power, over the office; either, as to contracting or abolishing its just and proper privileges, as such a power would affect, or overturn the constitution.—The supreme magistrate ought to be subject, not only to the fundamental constitutional laws, but to all laws, as having his own approbation; except, where particularly exempted from obedience, either expressly, or by obvious and evident implication, in so far as to be liable in all cases, to retribution and adhe-

adherence to legal contract; but in none, to personal punishment, except for transgressing the fundamental laws of the constitution; as the particular inconveniencies, in other cases, would be amply compensated, by securing the public peace, in so far, as it depends on his personal safety.

There are, ye monarchs, who would persuade you, that ye cannot do, nor even think wrong; and that, in no case, ye are liable to human punishment or reproof. These, these, O ye monarchs, and sovereigns of the earth, these, are your cruellest enemies—For tho' ye cannot be supposed so weak as to imagine, that, as moral agents, ye can do no wrong; yet, as political agents, they have often been too successful in deceiving you; and have induced you to employ those powers, with which the community have armed you, for the sole purpose of promoting the publick prosperity, in the violation of every solemn, every sacred engagement, in injuring, oppressing, and trampling on your fellow creatures; and, from rational beings, from guardians and protectors of humankind, from being the objects of general esteem, admiration and respect, of universal benevolence, loving and beloved;

loved ; have transformed you into monsters, rapacious, cruel, and deceitful, at once the dread, the scourge, and detestation of the human race—If ye have any regard for the happiness of your fellow creatures, for the affection and esteem of mankind, if you prize your own personal safety, and that benign serenity of mind, which virtue inspires, be not deceived in this respect. All history evinces the danger, the folly, of such a conduct.—Think, on the fate of tyrants, in every age ; how miserable in life, how dreadful, how awful, their exit ; and know, that a monarch, perhaps in no instance, ever injured his people, without in some sense or other, having cause to repent. Know, that instable is that authority, which is not founded in equity, and general utility.—Unsecure, and void of real enjoyment, that throne, which is not established in the affections of the people.

As it ought to be the principal duty of the supreme magistrate, to choose and appoint the ministers of state, and inferior executive officers, so on this choice, will his own happiness and prosperity, as well as that of the nation, in a great measure depend ; and on this account, the monarch, should always pay great regard to merit, virtue.

virtue and abilities, and endeavour by every justifiable means, to make his choice, the choice of the people; but, if that cannot be effected, he should conform to the general wishes of the nation; and it imports him much, both on account of the public prosperity, and of his own peace and happiness, to distinguish accurately between the voice of faction, and the voice of the people; and never to yield, to the importunities, the arts or the threats of the former, as such a conduct, would not only deter and prevent able ministers from serving him; but prove an encouragement to faction, which, it is equally his interest, and duty to prevent; as the principal intention of a supreme executive magistrate is the prevention of those parties, tumult and bloodshed, which the competition for power, and its emoluments, might otherwise occasion.

Monarchs ought not to be denied the gratification of the noblest affections of the human mind; they may indulge in the tenderest friendship, but they never should become the tools of their minion, and arm them with power at the expence of their people---They may be extremely liberal to them, but, however great their worth, virtue, and abilities, never ought in justice, prudence or sound policy, to make them ministers, if such appointment

ment is contrary to the general wishes of the community.

Though it is necessary for enforcing of the laws that their should be no interruption in the exercise of the executive power ; yet, it is neither necessary, nor would it be proper for the legislative body to be always assembled ; for if the necessary laws, can be enacted in a short time, such attendance would be an oppressive burden and expence on the members, and it might prove extremely dangerous to the constitution, as affording many opportunities, and proving a great temptation, for the legislative, likewise to assume the executive authority.---It would be equally improper, and prove equally dangerous, for the legislative body, to continue long without meeting ; as in that event, the government would either degenerate into anarchy, or the executive power would assume absolute authority.---It ought therefore, to assemble occasionally, as circumstances may require ; but it is not proper that the power of assembling, should be vested in that body, as there is a probability of the houses or particular members disagreeing among themselves, as to time or place. To remedy that inconvenience, and with a

view solely to the public good, this power like others, may be vested in the supreme magistrate; however, as human frailty is but too apt to abuse any power with which it is entrusted, it would be more agreeable to the nature of a free government for it to assemble annually, on a certain appointed day, and to continue assembled, for a limited number of months, if the members find it proper, but not to continue longer without the approbation and consent of the supreme magistrate; who likewise should be authorised to convoke them at any time during the recess, on very short previous notice, when the good of the state requires it; but the circumstances authorising such convocations, should be particularly specified by the laws.

If it is proper that the legislature should not always be assembled, it is still more proper, that the delegates representing the people, should not be delegated, for any great length of time, or that the same parliament, in consequence of one election, should continue in power for many years, as it would really alter the very nature of the constitution, convert the government into a species of aristocracy, and in a great measure deprive the
people

people of any share in the government.—The duration of each parliament for so long a term as seven years, if not dissolved sooner by the king, is one of the fundamental defects in the British constitution, and the source of many evils to the nation.—In long parliaments many of the members of the community must arrive at maturity during their continuance, without being represented—They prevent the sentiments of the people, from being known on many occasions, when they otherwise would, and thereby tend to mislead the king and his ministers, prevent the redress of abuses and grievances, annihilate every idea of responsibility in the members, are the ultimate cause of corruption, both in the electors and elected, prove equally pernicious to the king and to the people, and however contrary to the general sentiments, the opinion of party, or principles adopted by the court, are in fact, the principal cause of faction,—they subject the nation to the mean arts and machinations of a few ambitious, intriguing men, of Machiavelian principles, vicious, and really of mean capacity, principally distinguished, for a low and short sighted cunning, founded on dissimulation, fraud and collusion, which they dignify

nify with the name of political dexterity, and a quickness of parts, rather the result of a partial and circumscribed view of the circumstances which first present themselves, and a hasty decision, without having examined the intermediate relations, than a just and clear discernment; a disposition of mind, which prompts them at all times, to grasp with avidity and eagerness, at every immediate and apparent advantage; to profit of, rather than reform abuses; to prey upon, rather than protect, the property of their constituents; to sacrifice the right, to what they think the expedient; and whether in or out of office, their king, country, and fellow creatures, to what they deem their private interest—incapable of those comprehensive, and at the same time just views, which attend to the remotest, as well as the nearest interests, more under the influence of passion and prejudice than of reason, they see things through a false medium, are always defective in judgment, and altogether incapable of profound researches, or deep investigation; and happy, is this circumstance for mankind; for were they as capable, of forming profound plans, as of executing wicked designs, humanity would exhibit

hibit only, a scene of horror and of misery—It is indeed to be observed, that the weakest among almost every species of animals, are in general the most wicked *.—From a retentive memory and lively imagination, they may indeed be well qualified, by apparent but falacious similitudes, for disguising the truth, and perplexing investigation; from viewing matters in every light but the true one, their mode of reasoning may be specious without being solid—they may be good orators, and declaimers, as those are best qualified for moving the passions, and flattering the prejudices of others, who are themselves most under their influence.—Such men may likewise be well qualified for certain inferior offices, and may in this respect be made to contribute to the public prosperity, if properly restricted and attended to; but they are certainly, very improper for legislators, for guardians of the public rights, or conductors of the affairs of state—Yet, to such, ye people, have ye often sold yourselves, and by such, have ye often been sold—To gamesters, sharpers, the most abandoned and profligate

* I do not assert that every virtuous man is a man of abilities, but I maintain, that every wicked man is defective in judgment.

characters,

characters, men of no principle, who make a trade of ruining their acquaintance or their country, under the pretences of friendship or of patriotism, whose industry has no object, but the prejudice of others, and whose attempts are invariably directed to benefit themselves, at the expence of their fellow creatures—to traitors, who have constantly been invading and betraying the liberties and rights of their constituents, that they may plunder them, with the less reserve :—Parliamenteeing, by this means, has been rendered a species of gambling, a most infamous, and iniquitous kind of traffic—For the truth of what I assert, I appeal to the general conduct of many of your members in a political capacity, whither in or out of office, * have they not in general, been either, corrupt or factious ? To the almost intolerable, and

* No stubborn principles their worth debase ;

Patriots when out, are courtiers when in place

So, vice versa, turn a courtier out,

No weather-cock more swiftly veers about.

His country now, good man ! is all his care.

Who'd see it plundered ? That's denied a share.

Epilogue to Lillo's Christian Hero.

in

in general unnecessary burden of your taxes ; and indeed to the general administration of public affairs, for these some ages past. In almost every war you have been involved in, those respecting the right of the crown excepted, have ye not, either been, the dupes of your ministers, or have they not been either the dupes of their own policy, of foreign ministers, or of your own merchants and monied interest.

To be free without faction, is the perfection of civil government. Factions, render laws impotent, and beget the fiercest animosities, among men of the same nation, who ought to give, mutual assistance and protection to each other ; while the commotions and inconsistency with regard both to ministers and measures, which faction occasions, must likewise, greatly lessen the national importance, in the opinion of foreigners. By faction, I mean not, just opposition to arbitrary and tyrannical exertions ; but parties, formed from motives of unjustifiable ambition, avarice, or resentment, for creating discontent, fomenting insurrection, exciting discord and civil commotion, and involving their country and fellow creatures, in difficulty and distress, merely with a view, of gratifying those passions, or supplanting those in office—
who,

who, desire a change of ministers, not of measures ; who, will stick at nothing, however villainous, and readily sacrifice their country, virtue, and humanity, to effectuate their purposes, and defeat the measures of their opponents ; who are often, the more active and zealous in such pursuits, the more beneficial the tendency of such measures, or experienced the ministry ; who, after employing, every traiterous and insidious device, every delusive and specious pretence, for exciting civil discord, endeavour to give additional rancour to the evils they have occasioned, and involve their country in a complication of misfortunes, by first unavoidably engaging her in foreign war, and then preventing every possibility of her success, by discouraging their countrymen, and encouraging the enemy ; by portending, the most dreadful national disasters, and employing every expedient, to render their predictions effective, by becoming in some respects, the open and avowed, spies and intelligencers of the enemy ; by employing every expedient, for ruining the public credit ; by retarding the necessary measures, by every species of opposition, avowed rebellion excepted, by improper or ill-timed inquiries, absurd proposals, and

and by sowing and cherishing the seeds of discord, not only among the people, but even, among the national fleets and armies. Such is faction, that canker worm of state; and such are those, who conduct, or are candidates for conducting, national measures, in a corrupt government.—How disagreeably, is that monarch circumstanced? how unhappy is that country, that is exposed to such machinations, that is under such management?—Say, ye people, what has been your recompence, for these multiplied calamities, this profusion of misery? What avails your nominal privileges, your being taxed by your own consent only, and proportionally, as your representatives; if the latter, in imposing the taxes, consult their private interest only, and in places, pensions, and contracts, receive, a hundred fold in return?—In vain, ye deluded people, do ye talk of such privileges, in vain, may you expect from such, a redress of your grievances. For a few days drunkenness, once in the seven years, have ye often sold your liberty, your natural inheritance, your dearest interests, and become the slaves of those, who humbly solicited your employment, and ought to have been your ser-

vants. Yea, the slaves, for if the representatives, have a different interest, from that of their constituents, and employ with impunity, the power with which they are intrusted, to their own private emolument, contrary to the intention, and at the expence, of those who conferred it, if they sacrifice the public, to their private interest, in what other light, can ye justly be regarded, the intention of civil government, being to protect property, as well as personal priviledges; but, know besides, that such a conduct, directly affects your personal liberty, and that any country, other circumstances being equal, is even in this respect, more or less personally free, as the people, have more or less the power, of granting, refusing, and disposing of the public revenue. Let not the novelty of the assertion, occasion your rejecting it, without due examination, for your money, is in reality your labour, or what is the same thing, the representation, and produce of your labour*; and if

* I once intended, when treating of rights, to have included them all, under personal rights, as all property in some respect, may be said to be acquired, by labour; however I thought, it might be esteemed by some, refining too much, and the plan I adopted appeared to me, sufficiently simple, obvious and comprehensive.

this

this doctrine is just, it must follow as an obvious, and natural consequence, that ye have been, the tributaries and slaves of those, who under the pretence of necessary national taxes, have condemned you to labour, merely, for their private and particular emolument.

Where faction reigns, a nation may justly be said, to be in a state of perpetual civil warfare, it proves in many respects, extremely prejudicial to the community, and has a peculiar tendency in various ways, to mislead, and even to force a monarch, contrary to his natural disposition and inclination, imprudently, into arbitrary and tyrannical measures, and from a motive, merely of self-defence, to oppose fraud by fraud, and injustice by injustice—A nation so circumstanced, is in eminent danger, of becoming the slaves of an arbitrary monarch, or what is still worse, of an arbitrary and vicious faction——The prevalence of it in Britain, is observed by every foreigner, acquainted with the state of the nation, and is certainly a radical defect in the government, not so much indeed, from any defect in the original constitution, as from the abuse of it, the violation of the very fundamental principles ; for if parliaments were annual, the elec-

tors not being bribed, would have a regard to virtue and merit in their choice of representatives; which choice would likewise for the same reason be effected without tumult and disorder—Men of probity those of the best hearts and soundest judgments, would become ambitious of serving their country, when they imagined, they could do it with effect, and without submitting, to the mean arts of the sycophant, without corruption, bribery or treachery, without perjuring themselves, or being the cause, of perjury in others-----In place of factious tumult, sophistry and vague declamation, the voice of reason would once more, be heard in the senate—Factious, intriguing, vicious characters, would engage in other pursuits, and faction, would vanish with the cause of it; for, it is particularly to be observed, that the greater the corruption, the higher the bribes, the greater the temptation, to factious opposition; and that the extinction of faction, would remove not only, every inducement, but all necessity, of corrupting the legislature, whither, for supporting the dignity and just rights of the crown, or promoting the necessary and beneficial operations of government.---Corrupt ministers, or a corrupt parliament, cannot safely be trusted, even
by

by those who corrupt them----Their avarice and ambition is boundless, they are never satisfied, the disposal of every office, disappoints many, and consequently, creates many enemies; and, however soon they are bribed higher by the opposite party, they will instantly, forsake and oppose, those, to whom they formerly adhered----Instances are not wanting, of corrupt parliaments in Britain, being so far influenced by Spanish and French gold, as to sacrifice, not only the interest of their former corruptors, but that of their country----Where a system of corruption prevails; abilities and integrity, are banished from the public counsels, and every interest of the state, is sacrificed to its support---It poisons, the very fountain of justice, and law itself, is bought and sold----Conducting government, on the plan of parliamentary influence, is a most grievous burden and expence on the people, and the progress of despotism, conducted in this manner, is the more dangerous, that its approaches are the less perceptible, as retaining the letter and formalities of the constitution, without its spirit and intendment---some members of parliament, have had the wonderful effrontery, openly and avowedly to declare, that influence or corruption, was essential,

to

to the very existence of the British constitution---Do they mean, that if they are not bribed, they will betray the interests of their country and constituents, or that the constitution requires, that they should become, the mean and abject tools of the executive power, and in conjunction with it, sacrifice the interests of the people, to their private emolument?—Such doctrines, can admit only, of one or other, of these interpretations—That justice, that the national welfare, that the good of the people, can be obtained, secured, or preserved only, by perfidy, vice and corruption, what an absurd, what an impious doctrine, how subversive, of the peace, harmony and happiness of society, of every idea, of moral obligation?—

As the enjoyment of power, and its emolument, are the inducements to faction, it would contribute, with the foregoing measures, to the prevention of it, to diminish and divide the former, as much, as circumstances, will with propriety admit, and not only to diminish, but in some instances, to annihilate the latter, both, as conducing to this effect, and as an object of public œconomy; for it is not necessary, for the ministers and inferior executive

ecutive officers, to have large salaries, tho' the public good requires, that the supreme executive magistrate, should be provided with a very ample revenue, nay, the reverse is proper.—It is well observed * by Mr. Pulteney, “ That the passion of ambition is sufficiently strong to induce all men, of liberal minds, to serve the public, on account of the distinction which naturally accompanies such situations. By adding to that motive, another base one, of avarice, we bring into the competition, another description of men, who, forgetting the meanness of their talents, the indolence of their dispositions, the cowardice of their minds and their total want of elevation, extent of views, and true magnanimity, are apt, by every unworthy art, to thrust themselves into public departments, and to conceive, that they have fulfilled, the whole of their duty, when they have received their salaries, whilst they leave the public business, to be woefully conducted by secretaries and clerks.

“ It is so far from being true, that the higher and more important the office, the salary should be the higher, that it is directly the reverse, because the honour an-

* Considerations on the present state of public affairs.

nexed to high and important offices, is sufficient to induce all who are fit to hold them, to aspire eagerly at these situations, even to the prejudice of their private fortunes ; and if no falleries were annexed, there is reason to believe, that very few would be induced to continue in office, after they felt, and the nation was convinced that they were unfit to continue.

“ Notwithstanding the immense waste of public money in the government of France, yet it is a remarkable fact, that almost the whole essential business of the state, is carried on, at this hour, with little or no expence to the public, and that the people eagerly press forward to act in public situations, merely on account of the honour, and the influence, with which it is attended.

“ It is well known, that the administration of justice, in this manner, is carried on in France, for people pay a high price, for a law office, and are contented to do the duty, which is very laborious, without receiving, by way of salary, any thing like the interest of their money. Their motive is, that the situation gives them rank and pre-eminence among their fellow subjects ; and the vulgar opinion, that the judges in that country,

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are corrupt, will be found, upon enquiry, to have very little foundation. The duty of almost every other office in the provinces, is discharged at as cheap a rate to the public ; nay, the officers of the army, actually serve for less pay, than is necessary for their support, and, in spite of the frugality for which they are distinguished, generally ruin their own private fortunes, in the service of the state.

“ The waste of public treasure, arises, in that country, from an immense standing army ; and the idle and profuse extravagance of a court, which from the nature of the constitution, is under no controul with respect to its expence.

“ It will probably be said, that in despotic governments, the possession of office, carries with it a degree of protection, and a power too, of oppression, which in a free country, are out of the question. But I am informed, that in the republic of Holland, the salaries of very high and important offices, are exceedingly trifling ; and in our country, we see, with how much eagerness, the office of lord lieutenant of a county, is solicited, though attended with expence, instead of emolument.”

Effectually to prevent, the corruption of parliament, it is not only necessary, that parliaments should be annual, but likewise, that no person, should be returnable as a member, for more, than three parliaments out of six.

The foregoing measures, would have a very powerful tendency, to reconcile the interest of the crown, with that of the people, and to prevent those jarrings and jealousies, which at present, are productive of so many pernicious consequences to the community ; but to prevent them as much as possible, it is necessary to reform every defect in the form of government, and to remove every just cause of complaint.

If there is a danger, that a body of delegates, chosen for any term longer than one year, may abuse their power, the danger must be still greater, with respect to those, who are not only legislators for life, but hereditary ; and on this account it is necessary, that the house of nobles should have no power of framing new taxes for the subject, though, for their own security, they should possess a power of rejecting such.

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The house of delegates, should have no judicial authority, and should be particularly excluded from judging in their own case, as in all election causes, and causes of privilege of parliament, in which any member, or members of the house, are party, or parties; as by such means they might constitute a self created house of commons, not a house of delegates, and entirely annihilate the liberty of the people. These causes should be tried, in the common courts of justice, before the judges and jurors of the land, according to due process of law, and in this case, there should be no appeal to the house of nobles.

Exclusive of minors, the clergy *, as they would be apt to involve temporal concerns with those of religion,

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aliens

* There is no hardship or injustice in this case, for clerical rights are political not natural rights, a national church being merely a political establishment for the public good; and, as the other members of the community must be the sole judges of the benefits which they derive from it, they ought of consequence to be the sole judges of the recompence or political advantages which the members of it, on that account, should enjoy.—This recompence should be entirely voluntary, not compulsory, or at the will of the church.

It

aliens born, the judges, returning officers, for their respective districts only, persons attainted of treason, or felony, those pensioned by the crown, under which I include all public contractors, agents and commissaries; with those dependent on the nobility, as they may be supposed, under undue influence; and all the executive officers of the state, those serving in the militia excepted, as forming a constituent part of the executive power, and consequently, being represented in parliament by the supreme executive magistrate; as enjoying the benefit of a negative, or power of rejecting and rendering abortive any legislative attempts to their prejudice; and, as it is not proper, that the exe-

It is excluding a profession, but not involuntarily depriving any one of his natural and just rights; for, if the members of any church, whether established by law or not, do not derive greater advantages from the profession, than from their natural rights they would be entitled to, they have it in their power to renounce their clerical capacity, and claim and enjoy those advantages, to which in consequence of these rights they are justly entitled in common with the other members of the community.— If they derive greater advantages from their profession, it is apparent what line of conduct they will pursue, and they certainly in either case can have no just grounds for complaint, as the matter is entirely optional, not compulsory.

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cutive should likewise possess legislative authority ; exclusive of these, every other male in the state, in vindication of his natural and essential rights, and as the guardian and protector of his family, should be a freeholder, or freeman ; and be capable of voting for, or being chosen one of the representatives of his order—The superintendence of domestic œconomy is the natural and proper province of the female †. Excluding from any share in the legislation a very great majority of the inhabitants of Britain, justly entitled to that privilege, is likewise a very capital defect in the British form of government.—He only is a freeman, says

† The females, sensible of their inability for national defence, and for many public and political employments, from the natural weakness of their constitutions, and from these indispositions, interruptions and inconveniences, to which breeding, bearing, nursing, attending and rearing their offspring, &c. &c. subjects them, have every where and at all times, acquiesced in the propriety, and acknowledged the right of the males to conduct those matters, for which they themselves are so ill qualified, and for which the males seem evidently designed, and are so admirably adapted by nature ; have either expressly or tacitly delegated to them this power ; and relied on that beauty and those charms with which nature has armed them for their defence, as a security against any unjust exercise of it.

Aristotle,

Aristotle, who enjoys some part of the legislative, executive, or judicial power of the state—What interest can those have in the prosperity of their country, who are distressed and enslaved by it?—A poor man has certainly equal right, and more need of a representative and guardian, than the rich; nay, the very intention of civil government ought to be the prevention of violence and injustice; the defence and protection of the weak and the indigent—It is but justice that those, who are possessed of the greatest property, should contribute proportionally more for the defence of the state and protection of property, than others, as they are more interested in its preservation; but this circumstance certainly can confer no just right for disfranchising such as contribute less—Those who are not represented, cannot justly be compelled to pay any taxes, or obey any laws, in the enacting of which they have no vote or negative—The enforcing such laws, and by the minor part of the community too, contrary to the interest and inclination of the majority, is inconsistent with every idea of equity, contrary to the laws of God and nature, the antient usage of the kingdom, and fundamental principles

principles of the constitution ; and, tho' law, is likewise tyranny ; for none can of right, do that, which they cannot do justly.—Increasing the number of freeholders, freemen, or electors, by conferring that privilege, on all who are justly entitled to it, would likewise contribute much to the prevention of election and parliamentary corruption.

The delegates should be chosen annually, on a certain day, without the issuing any writs of election ; an exact roll should be kept of the competent voters, and a representative returned by each district, for every 2000. of such, or any other definite number, that may be deemed more agreeable to the circumstances and interest of the community.—To prevent corruption, the delegates should be chosen by ballot, or suffrages privately given.

The opinions and suffrages of the representatives should in all cases be public, to enable the people to form a proper estimate of their political conduct, and for this reason, the doors of the senate-house should always be open, when the members are engaged upon business, and a gallery, or some separate, distinct, and

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commodious part of the house, allotted for the reception and accommodation of their constituents.—Peace officers, or a party of the militia, and servants of the house always attending, to prevent disorders, tumult, or the violence of faction.

While other circumstances are equal, power must consist, either in numbers, the sword, or the purse.—The two latter, fraud and superstition excepted, are the only supports of tyranny, or the power of the few over the many; for it is evident, that numbers can avail but little, if destitute of money and arms, or if incapable of using the latter properly for want of military discipline; it is therefore proper that there should be no standing army, no mercenaries, whether natives or foreigners; or at least, that the number should be very small, in proportion to the national militia, if particular circumstances should render some necessary; for the people must have but a very precarious hold of the purse, if the sword is entrusted with the executive power; and the people, either have not, or cannot make proper use of arms, when the preservation of their just rights, when their duty may require their employing them—The
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keeping the army on foot, from year to year only, could be no adequate security, though the persons who composed it were annually changed; for if they attempt seizing the purse, overturning the constitution, and rendering their establishment permanent; they must effect it, if at all, in a much shorter period.—It is particularly to be observed, that dictatorial powers vested in the executive magistrate, are dangerous or not to the state, according to the means of carrying them into execution, and of opposing any unjust, tyrannical exertions of them; and, that on this account, it is particularly necessary that the sword should be entrusted with the people, not with mercenaries; and that matters should be so regulated, as that the executive power under the pretence of maintaining the public peace, should not prevent the petitions and remonstrances, and those assemblies of the people, which are intended and calculated for supporting, reforming, or restoring the laws and government.

The maintenance of the public peace, and the national defence, ought to depend principally, if not entirely, on a potent navy, and a well regulated and well disciplined militia; and the national defence, if the

country is an island, in a particular manner, on a powerful fleet.

A little additional expence, bestowed upon the navy, might to such a country, in some cases, be attended with very important advantages ; for if a decided superiority at sea, was obtained by that means, any additional, unconstitutional or extraordinary expence, for internal defence, would be rendered unnecessary, and might be entirely saved ; the foreign trade of the nation, would be protected, while that of the enemy, might be nearly annihilated, their credit ruined, their navy destroyed, and their communication, with their distant colonies interrupted.

But the only effectual means, of maintaining domestic peace, and at the same time, for supporting liberty, is a well regulated and well disciplined militia ; which ought to consist, of a certain number of the inhabitants of each county, chosen by lot, for any time, not exceeding three years, and officered by the land-holders, and people of property in the county ; who likewise, should serve in rotation, no one holding a commission longer, than three years at a time, unless in time of war, and
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when on actual service, or of being employed again, in that capacity, till after the expiry, of an equal period. They should not in any case, be compelled to leave the kingdom, or even to march out of their respective counties, unless, in the case of invasion, or actual rebellion. They should be exercised at stated times, and part, always kept embodied, for necessary guards, &c. They should not be encamped, but in cases of urgent necessity, and those in camp, garrisons or fortresses, frequently relieved; as otherwise, they might soon imbibe the spirit, and differ in little, from mercenaries; but above all it is necessary, that a system of martial laws, should be formed for their regulation, as well as that, of the navy and regular army; if any; established on fixed principles, (the offences and respective punishments, being clearly pointed out and ascertained) and as agreeable to equity, moderation and liberty, as circumstances, with propriety will admit.

If circumstances should render it necessary, to maintain a few regular troops, for the purposes of offensive war, foreign garrisons and foreign expeditions, they ought to consist wholly, of natural subjects, enlisted for

a short, and limited time, who should live intermixed with the people, as much as is consistent, with the service for which they are intended, and every proper expedient used, for inspiring them, with the same spirit as the people. It is particularly observable, that in most despotic countries, despotism is supported, by national troops, and these, commanded by persons, of the greatest property in those states; this circumstance, may teach us how little, even those, are to be relied upon; and the reduction of the standing army, is conducive to liberty, by admitting, of a reduction of taxation, as well, as by other circumstances. If we may judge, from the present practice of the British ministry, in employing principally, raw unexperienced new levies on actual service, there can in no case, in a free country, be occasion for maintaining a large establishment, of regular troops in time of peace.

Were the pecuniary supplies, granted in perpetuity, the executive power, might become independent of the legislature and the people, and contrary to their inclination and interest, might maintain a body of regular forces, sufficient to enslave them; it is therefore, in a
free

free country absolutely necessary for the public revenue or supplies, to be granted, for a short period only.—National debt, on this, as well as other accounts, is particularly dangerous, and detrimental to a free state; for the supplies or subsidies, necessary for paying the interest of such debt, must, from the nature of it, continue to be levied, so long as the debt remains, and constitute a permanent revenue, the raising and application of which, must be entrusted to the executive power; but, what is still more dangerous to public liberty, as any unjust application of it, would be less violently opposed by private interest, the raising and applying of a sinking fund, or any subsidies, appropriated by the people; for liquidating or extinguishing the debt, must be entrusted, to the direction and disposal of the same power. Besides, the nomination of such a multitude of officers, as are necessary for collecting and distributing such a revenue, and the frequent opportunities it affords, of corrupting individuals, and rendering them dependant; by means, of preferences in loans, subscriptions, tickets, contracts, remittances, and other money transactions, must give a prevailing influence, to that branch of government, which

which is entrusted with it, an influence, which may be employed to the prejudice, of the other branches of the government, as well, as to that of the people. National debts are in other respects, extremely prejudicial to a nation, as they encourage enemies, diminish the national resources, occasion, the deepest and most fatal species of gaming, the fabrication, of false and injurious reports, with other stock-jobbing frauds; and not only, in some instances, render the people to a certain degree, the slaves and tributories of foreigners, but the impositions, necessary for raising the sums, which pay the interest and the expence of collecting, &c. operate, as direct and immediate taxes, on the industry and improvement of the nation.

From what has been advanced, it may justly be concluded, that if there is a great national debt, if the interest of the delegates, is not intimately united, with that of their constituents, by means of regular, frequent and short parliaments; if the supplies, are not granted for short terms; if there is a large standing army, oppressive, injudicious laws, for preventing the just exertions of the people, in vindication of their natural

tural or constitutional rights, under the pretence of preventing riots; if there is no militia, or a militia on an improper establishment; if the people, are not all and equally represented, and are unarmed, undisciplined and defenceless, in any country; that such a country, must be on the decline; that there can be little real liberty, and that any remains of it are held, on a very precarious tenure.

The Liberty of the press, is an indispensable requisite, as without it, a free government, cannot be long supported, if such a government can justly be called free. It is by this means only, that the people, coolly and deliberately, and without any pernicious effects, can exercise that censorial power, which in such a government, they ought, and must possess.

Promoting the public felicity, not speculative opinions, being the proper object of political institutions; religion, when considered in a light merely political, should be regarded only, with respect to its political tendency or effects, and the public profession, of all tenets and opinions should be tolerated, so long, as they do not endanger the public peace, or corrupt the morals of the people; but prudence, sound policy, and even justice

justice require, that the propagation of doctrines of a pernicious and dangerous tendency, should be discouraged; and their professors, prevented from acquiring any dangerous influence in the state; and though no one entertains more liberal sentiments, with regard to matters of opinion, merely as opinion, or is more sensible, how pernicious and how ineffectual, persecution commonly proves; yet, for the reasons already mentioned, nay, these very sentiments, a spirit of charity, a love of religious, as well as of civil liberty, and a regard, for the interest and happiness of my fellow citizens, make me wish, that such doctrines, were not in every respect, put on an equal footing, with others of a less dangerous tendency, and that effectual measures, but as lenient as prudence will admit, were pursued, to prevent the power and increase of their followers, from becoming formidable---However, the only methods, I think justifiable for that purpose, and these only, from a principle of self-defence, are preventing them from holding any offices under government, or engrossing so much fixed permanent property as might render their power dangerous; but above all, to prevent the spreading of
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such doctrines, by an improper method of education, as reason, can seldom efface, these early impressions from weak minds——Prevent such impressions, and there will be little to dread, from pernicious, absurd and illiberal doctrines----A philosophical mind, will reject them with contempt, and weak minds, will generally adhere, to those in which they have been educated.——

Education, in other respects, merits the particular attention of the legislature, as having a very powerful influence on the political opinions, the manners, and morals of the nation.—But, if the rich and the powerful, are polluted by corruption, or bathed in blood ; if that source is corrupted, from which justice alone ought to flow ; if the only justifiable motive for law is disregarded, and in place of preventing injustice, nothing is attended to in framing of the laws, but legally protecting the violences, the usurped, unjust powers, assumed by the rich and powerful ; but screening corruption, fraud, and perfidy ; if the laws are so formed, that those who practise the profession of the law, prey upon, in place of protect the property of the people ; if the stewards of the public, traiterously leaguings with the executive power,

load the people with unnecessary taxes, and share in the spoils ; if these vices and enormities are authorized by fashion, by the example of the great, the rich and the powerful, it can be a matter of no surprise, however perfect the plan of education, that the flood of corruption, fraud, and iniquity, flowing from this impure source, should entirely overflow the land.—The powerful influence which the example of the great has on the conduct of the people, cannot be more strongly exemplified, than by the wonderful change produced by the court, ministers, and parliament of Charles the second, on the morals, and manners of the nation.—It has been usual for the practisers and defenders of such corrupt, vicious measures, to observe, that reformation ought to begin with the people, as if the poor could lead the fashions, and they seriously intended to follow their example.—Such doctrines, are a mere mockery, and gross insult, on the good sense of the nation.—They corrupt first, and then traduce and upbraid, those they have corrupted.—I agree with them however, in so far as to think, that wherever this is the case, without a reformation of the people, redress is not to be looked for.—From them, I expect

expect no good ;—the reformation, the people most require, is to become truly sensible of their own interest, and to assume that spirit necessary for asserting, vindicating, and maintaining, their natural and just rights. If the government, is oppressive and tyrannical, and the laws unjust, whatever the mode of education, purity of manners and morals, virtue, justice or rectitude, liberality of sentiment, elevation and energy of mind, noble, generous, and manly exertions in the people, are not to be obtained or expected, or indeed, justly to be required—when misery, oppressed by the unfeeling cruelty of power, can find no asylum in the laws ; when the indigent are depressed, enslaved, and abused ; when the interest, prosperity, and happiness of the people, are sacrificed to the rapacity, the caprice, or cruelty of the rulers ; when those who should cherish and protect them, become their oppressors ; when justice is sacrificed to fraud, to intrigue, and violence ; there can be little doubt but the people, even from a principle of self-defence, if influenced by no other motive, will follow the example of their superiors in power and riches ; that they will employ the same arts, and practise the same vices, as their oppressors ;

pressors ; that they will become fraudulent, deceitful, cruel and revengeful ; and, if they have not recourse to open force, they will naturally oppose injustice by injustice, and endeavour to obtain by guile some compensation, for the violence and oppression to which the law subjects them---As injustice can be supported by injustice alone ; and resistance is the natural offspring of oppression, unsecure, must that power be, that is founded on fraud and on violence, and unhappy must it be for mankind, when, justice ceasing to be the bond of society, jealousy, treachery and rapine, universally prevail.

It is on various accounts then, of the utmost importance to mankind, that governments and laws, are established in justice ; besides, the advantages immediately derived from them, it is under such only, that virtue and enterprise can characterise a people ; that duty, corresponds with interest ; that the law supports virtue, and is supported by it ; and that the governed can with propriety be of opinion, that it is for their advantage to support the government.

SECTION

S E C T I O N I V .

*Of deviations from the true principles, and of the dissolution of
Law and Government.*

ALTERATIONS in the form or mode of government, are effected, either, by foreign conquest, internal usurpation, or tyranny, or, by the consent and approbation of the majority of the people.—Of these, the last only can be agreeable to the public prosperity and happiness, and consequently to justice; besides, that power alone, which has a just right to create or establish, can have a just right to alter, or dissolve the government.—Mr. Locke seems to think, that every unjust alteration in the mode or form, dissolves or annihilates government; and that the dissolution of government is requisite, to justify the people in altering or new-modelling the constitution; but government may be altered in mode or form, without being annihilated; a total dissolution of government, being a state of anarchy; and the people have a just right, at all times, to reform, alter, restore, or new model the constitution, as well, as to punish those
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who have abused or betrayed their trust ; for it is but reasonable that all those, and those only, who are interested in the event, and whose happiness or misery must depend upon it, should possess such a power, as they alone can be competent judges, of what will contribute to, or promote their own happiness or misery : and though, in the exercise of such power, each member may consult his particular interest and happiness only ; yet that power must tend to the public prosperity, for in the interest and happiness of the particular members must that of the community consist.

The right of conquest, must in justice, necessarily depend, upon the right to conquer ; and as no one, can justly injure another, conquest, can be justifiable only, on the principle of self-defence ; and tho' the aggressors, as violators of peace and justice, as public and lawless spoilers, robbers, and assassins, may justly forfeit their lives, and consequently their liberty ; yet, it is the aggressors only ; under which description, certainly, neither those, who may justly obtain settlements in their country, or their progeny ; or those, who neither voluntarily concurred, or were any way aiding and assisting the aggressors, tho' of the same nation, and their progeny ;

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or even the innocent offspring, of the aggressors themselves, can justly be comprehended : and hence conquest can give no just right, over the lives, liberty, laws, and form of government, of these.

But, tho' the life, &c. of the aggressor, may in certain cases be justly forfeited ; yet, as it is often difficult, sometimes impossible in national disputes, to determine, who are the aggressors ; and, as in these, force not right sometimes prevails ; there being no power on earth, whose jurisdiction or superiority they acknowledge, or will appeal to, except the general feelings, reason and interest, of neutral nations ; who are often little disposed to engage in the dispute, except with a view to their private interest, and sometimes incapable of enforcing justice, tho' they might incline it ; and, as the events of war, are fluctuating and uncertain ; the practice of modern civilized nations, which neither forfeits the life, property, or personal liberty of the vanquished, except confining prisoners, during the continuance of the war only, is infinitely preferable, to that of the antients, (which indiscriminately, condemned captives, to death or slavery ; whether captivated, in a just or unjust war ; which involved,

volved, the innocent with the guilty ; and which generally proved, prejudicial to the conquerors, as well as the conquered) ; as preventing or mitigating, the sufferings of the innocent ; as alleviating human misery and diminishing the evils of war and of conquest.

Usurpation and tyranny, are the exercise of power, contrary to the approbation, and to the prejudice of society ; and consequently, are unjust : Are a total deviation from the only beneficial, the only laudable principle, on which government and society can be established ; and pervert, that, which ought to contribute to the protection, and promote the prosperity and happiness of mankind, into one of the cruelest scourges, the most fatal evils, that humanity can possibly experience.

Usurpation, consists, in the assuming and maintaining, by force or fraud, any power, that in justice, belongs to another ; and may be exerted in various ways ; as by unjustly assuming, the legislative, executive, and judicial authority ; and, by various members of the state ; by individuals, by faction, by the judicial, assuming the legislative, or executive ; the legislative ; the executive,

utive, or judicial ; or the executive ; the judicial, or legislative authority.

Tyranny, is the exercise of power to the prejudice of society ; and to which, of consequence, no one can have any just right. It can be supported only, by force or fraud ; may be exercised, by individuals, or by faction, by the legislative, executive, or judicial powers, singly or combined ; and in various manners, as, by those in office, preventing the legislative body from assembling, at the proper time, or acting constitutionally, and for the public good, when assembled. By betraying the trust, reposed in them by the people, and employing that power, with which they have invested them, in arbitrary and unjust measures, as the means of subverting the laws, and altering the form of government, by illegally and unjustly, influencing representatives, electors and elections ; by enacting or enforcing, pernicious, partial and unjust laws, or subjecting the people, to the yoke, of foreign or domestic bondage, with a view of promoting, their own ambitious, tyrannical purposes.

It is undoubtedly, the interest of mankind, to resist and prevent, these violations of just government, to punish the usurpers and tyrants, and either to restore, or to reform the constitution, so as to prevent, as much as possible, such violations in future.—It is likewise their duty, and if the people, have at any time, or under any circumstances, a right to resist, alter, or dissolve, the established government, the people must necessarily, be the judges of that time, and these circumstances, for supposing, such a right in the people, exerciseable only, at the will of the government, would be a gross and palpable absurdity.—That mean, servile and iniquitous doctrine, which inculcates passive obedience to the present government or reigning power, though founded on injustice, and supported merely, by fraud or force, is at once replete with absurdities, and the most pernicious consequences—To yield, to the violence of superior force, may be an act of necessity, but certainly cannot justly be numbered, among the religious or moral duties—To submit tamely to injustice, or to become the instrument of oppression, is to act in direct opposition, to the principles of self preservation, to the law of God
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and nature, to moral obligation, and that duty which every one owes to himself, to his country, and to his fellow creatures.

Nor can any evil be justly apprehended from the exercise of this right, for the people are so strangely devoted to old customs, as to be commonly, but too much averse to changes, even, when the necessity of a reformation is obvious, and the opportunity favourable ; will not only, make great allowance for human frailty, and will readily excuse, much mismanagement in publick affairs, but in general, will suffer much, before they have recourse to it ; or when forced into such measures, by violence, fraud, or tyranny, can the consequences, be justly attributed to them, or are they in justice accountable, for any evils which may ensue. It has been well observed by the great, the good Locke *, “ that force is to be opposed to nothing, but to unjust and unlawful force ; that whoever makes any opposition in any other case, draws on himself a just condemnation both from God and man † ; and if any mischief come, in such case it is

* Locke on Gov. Part 2d Sect. 204.

† Sect. 228.

not to be charged on him who defends his own right, but on him that invades his neighbour's."

Allegiance and protection, ought to be reciprocal ; and submission, can be justly required only, when the benefits are mutual ; and is not due, to the man, but to the magistrate ; not to the tyrant, but to the protector ; whose crime in betraying his trust, must be the greater, the greater the benefits, the honours and emoluments attending it.

Rebellion, according to nature and justice, is to oppose the majority of the people—According to law, the reigning power.

In justice, those, who transgress the laws of God and nature ; those, who violate the sacred, positive and natural rights of mankind, are rebels ; not those, who vindicate and maintain them.

When the people are under no restraint, in declaring their political sentiments, and it is obvious that the majority, approve of the present government ; in that case, any unsuccessful attempt to overturn the government, is rebellion, both in law and justice : a successful attempt, according to justice only.

Rebellion

Rebellion, differs from usurpation and tyranny, as the attempt from the deed.

Though, the assertion, to courtly ears, may sound a little harsh from its novelty; yet, according to these principles; the monarch, the legislative, the executive, or judicial powers, nay, the government itself; may be guilty of rebellion, equally, as the meanest subject.

Whether, that English parliament, which elected for one year, by the people; re-elected themselves, for two more; whether, that British parliament, which was delegated for three years, and continued themselves, for four more; whether, that parliament, which contrary to justice, the nature and principles of the constitution, defranchised, and deprived of their natural and just rights, a great majority of their fellow citizens; whether, the monarchs, who consented to these acts; whether, those representatives, who assumed and exercised, a judicial, as well as a legislative authority; who wrested the judicial power, in some instances, from the people, and judged in their own case; who rejected the member, legally chosen by the people, and appointed, another of their own choosing, to occupy his place; whether

ther in these instances, they exceeded not, the powers conferred on them by the constitution, and betrayed, the trusts reposed in them, by the people; and became by these means, not only rebels; but usurpers; violators of the constitution, of the inherent rights of their fellow citizens, and the eternal and immutable laws, of nature and justice; I leave every one, to determine for himself—Whether, they may have likewise been tyrants, or used this usurped power, to the prejudice of the public; whether, they have enslaved the people, and condemned them to almost incessant labour, (from the grievous burden, of a most oppressive load of taxes,) to satisfy the almost boundless rapacity, of usurers and extortioners, tax-gatherers, pensioners, contractors, placemen and mock patriots----Whether, the prolongation of parliaments, has not created an interest in them, different, from that of their constituents; and whether, they have not imposed, great part of these burdens on the people, for the purpose of creating places and pensions for themselves, or in other words, for the express purpose, of enabling the executive power to bribe them----Whether, they have not been corrupt and
factions

factionous, and established it as a maxim seldom to be deviated from, to oppose, even, the just, expedient, and salutary measures of the executive power, unless paid for their vote, or bribed by a place or pension into compliance; whether, in many cases, they have not been the mean corrupt tools of the executive power; the mere registrators of royal edicts; whether, in other instances, the supreme executive magistrate, has not by this means, of necessity, been rendered dependent on and even the tool of faction, or of his ministers; and whether, in many cases, he has not from the same cause, been more influenced with regard to promotion, and the employing, not only of ministers of state, but even, of admirals and generals, by parliamentary interest, than by real merit, or the approbation of the people; and whether, the community has not suffered materially by these means, the present state of the nation, and the conduct of parliament, since those periods must determine—It was thus, that the Roman decemviri, at first elected, for one year only, and afterwards continued for another; attempted to perpetuate, the duration of their power. It was thus, the Burgo-masters and senators of Holland,

land, converted that government into an oligarchy, and in a great degree enslaved their fellow citizens : and it is thus, or by conquest, that usurpation and tyranny has been established, in all times and in all countries—— The Marquis of Baccaria, justly “ observes, that in every human society, there is an effort continually tending to confer on one part the height of power and happiness, and reduce the others to the extreme of weakness and misery. And Mr. Gordon, * has remarked, that it is the nature of power to be ever encroaching, and converting every extraordinary power, granted at particular times and upon particular occasions, into an ordinary power to be used at all times, and when there is no occasion ; nor does it ever part willingly with any advantage. From this spirit it is, that occasional commissions have grown sometimes perpetual ; that three years have been improved into seven, and one into twenty ; and that when the people have done with their magistrates, their magistrates will not have done with the people.”——To prevent, such continual encroachments, and unjust usurpations of power ; the most unremitting jealousy and exertions, on the part of the people are required.

Were

* Gordon's tracts.

Were parliaments to extend their duration, to fourteen, twenty-one, or any greater number of years ; the nation, at each election would be involved, in all the horrors of a civil war. Was a parliament to perpetuate its duration, and to fill up its vacancies ; the constitution, would be entirely overturned, and the nation would be in a more deplorable state, than if subjected to the arbitrary sway of the most despotic monarch : as it is more difficult, to comply with many and discordant humours, to gratify the passions, appetites and inordinate desires, more oppressive to be the slaves, and more difficult to break the galling yoke, of many tyrants than of one. It certainly were better that the executive power, directly assumed the legislative, than exercised it indirectly, under the cloke, in the name, and in connivance with, an unprincipled, corrupt, perjured, and vicious cabal, called a parliament ; who not only betrayed, abused, and trampled on ; but likewise, by their example, vitiated, and corrupted, the manners, and morals of the people.

Was a certain day appointed for annually choosing representatives, without writs being issued for that pur-

pose ; a parliament, could not prolong its duration, beyond the legal period, contrary to the will of the people ; unless powerfully supported by mercenaries, and the people were destitute of arms and military discipline ; for notwithstanding any act of theirs to the contrary, the people might choose other representatives, at the appointed time ; whose just right, it would be the interest of both king and people to support, in opposition to these usurpers, and to free themselves from the bondage, of such self-created tyrants and legislators.

Since the duration of parliaments was prolonged, does not their history exhibit little else, besides the history of faction, funding, taxing, bribery and corruption ? Have not the people and their boasted constitution, become a subject of ridicule, and reproach with foreigners ?—Is it without reason, that Voltaire observes, that they are free only, once in seven years ; and are then incapable of making a proper use of it ; if an unarmed multitude, exposed to the subjection, attacks, and violence, of a very large, and formidable body of mercenaries ; and an army of tax-gatherers, publicans, placemen and pensioners, properly disposed through the nation ;

tion ; and who are ridiculed and reviled, by the very traitors, taskmasters, and tyrants, who oppress them, can even then, with any propriety, be regarded as free ? Has not that, which should have been the palladium of the people's rights, become a mere sink of corruption ; and have not the people, been rendered the tributaries, the dupes, and slaves, of tyranny, and of faction ; mere hewers of wood, and drawers of water.

Of the present parliament, I say nothing.—It is yet, in its infancy.—Let its conduct, be its justifier or accuser.—But, however upright its conduct may be, what has happened, may happen again ; and as it is both natural and reasonable to conclude, that the same causes will be productive of the same effects, it imports the people much, to endeavour to prevent such effects in future, by removing the cause of them ; to remedy this, and other defects in the form of government, to restore the constitution to its pristine purity, supply what may be deficient, and render it as perfect as possible : and it merits, not only their particular attention, but their utmost efforts : the restitution and preservation of their natural, inherent, constitutional, and just rights ; the fe-

curity of their liberty and property, is the object of such efforts; every thing that ought to be dear to them; every thing that is worth preserving, depends upon such exertions; and the longer they are delayed, the greater must the grievances become, and the more difficult to redress. Exert then, my countrymen, before it is too late, that power with which the Almighty has armed you, in support of these invaluable rights, which his bounty has bestowed upon you, as the greatest of human blessings; and of which, he has constituted you, the just and proper guardians. Believe me, your liberties can be safe, in no hands but your own. To repel, force by force, is the undoubted privilege, even, of the beasts of the field; and certainly, cannot be denied to man, the first of human beings; but, as other methods of obtaining redress, may on many occasions, and on many accounts, be preferable; this, should be the dernier resort. Recourse should never be had to force, till every milder method has failed of success. Petition the best of monarchs, to dissolve the present parliament. If he finds, that your petitions convey the general wishes of his people; actuated by those generous, those just, and noble

noble sentiments, to which a brother monarch insidiously pretended, he will not deny your request. To see you happy, really seems the first object of his wishes; to govern you free and independent, the last end of his ambition; * and he indeed appears, to regard it as his greatest glory, to be the first citizen of a free country. † For the truth of this assertion, I appeal to his private virtues, to his public conduct; to the act, for settling the civil list revenue, for securing the authority and salary of the judges during life or good behaviour, &c. &c. to the unanimous suffrage of all the virtuous in Europe; nor, so far as I know, have ever the wicked, dared in any instance, avowedly to arraign, the purity of his intentions. If I can trust the dictates of my own heart, it is incapable of flattery, even to a monarch; but the same sentiments which prevent its stooping to such meanness, makes it embrace with equal eagerness any opportunity of paying a just tribute to virtue. It must be his interest, as well as his inclination; for annual parliaments,

* Speech of the king of Sweden to the diet, 25th June, 1771.

† Speech of the king of Sweden to the states, 1st June, 1772.

would

would wonderfully abate, the rancour of party and civil discord, if not annihilate it. The crown has now, nothing to dread from the barons, or great families; and would then, have nothing to fear from the commons; for the people would then enjoy, all the natural and just privileges, all the rights, of freemen and rational beings; and all the power, consistent with good government; or that commons, if they know their real interest, ought to have, or would require. Government, being then established on principles of equity and general utility, would reconcile the interest of the rulers with that of the ruled; the crown having nothing to fear from the subjects, nor the subjects from the crown, the constitution, would then become the object of admiration, I had almost said adoration, of all who fully comprehend it; and the people having then, nothing to dread from their supreme magistrate, would esteem it, as their pride and their glory, to contribute to his honour and felicity. To such a monarch, your solicitations cannot fail of success; unless deceived, by the misrepresentations, of vicious and corrupt ministers; in which event,
you

you may wait with patience, till the present legal period of its dissolution, when, unless parliament think proper to continue or perpetuate its duration, (in which event, I hope your spirit, as well as your reason, will point out and prompt you, to the conduct you ought to pursue,) you will, according to common course, have an opportunity, either of selling yourselves again, for seven or more years, or of becoming without bloodshed, in fact, as well as nominally, a free and independent people; by electing none, but such as will give you security, that they will use their utmost endeavours, to promote the passing of a law, for establishing annual parliaments, the representatives, to be chosen on an appointed day, without the necessity or formality, of issuing writs; likewise to meet on a certain day, for the dispatch of business; and to remedy, other flagrant defects in the constitution. If you are foolish and mean enough, to sell yourselves, you justly merit all the evils that can follow; but I fondly flatter myself that you will be influenced by nobler motives; and actuated, by that manly vigour and energy of mind; by that wisdom, integrity, and fortitude, which inspired
and

and supported, your wife and virtuous ancestors, in pursuit of those rights and privileges, which they purchased with their blood, which you inherited from them, and part of which, you still retain. That by an upright, rational, manly, cool, yet determined conduct, you will prove yourselves the genuine descendants of such ancestors; and influenced by a just regard, for your own interest and that of your posterity, not only assert, your just right to the privileges they enjoyed; but proceed still farther, and improve, upon the plan they followed, and system they bequeathed; and equally, to your glory and emolument, exhibit to the world, a virtuous, free, and independent people; and a form of government, founded on principles of equity and general utility, which may serve as a model, not only to the present age, but to futurity.

Though the necessary reformation in the British constitution may not take place, and the spirit of liberty and just government diffuse itself among mankind, so soon, as the wise and virtuous could wish: yet, there can be little doubt, but sooner or later, reason and justice must triumph

triumph over folly, fraud, and oppression ; and that mankind will learn, both to know and maintain, their natural and just rights.

Inquiry is now gone forth ; the spirit of liberty has pervaded, every noble and generous breast, and is engraved in indelible characters, on every worthy heart ; and, it is such alone who possess, true courage and magnanimity ; a courage indeed, which is never offensive, but which can neither stoop to any meanness, nor calmly tolerate, any unjust or ungenerous actions, with regard to itself or others.—Nor are ye, rulers, less interested in this reformation than your people ; for, till law and government are established on principles of utility and justice, the general manners and morals of your people, must be corrupt and vicious ; and your power precarious, and void of real enjoyment.—Mankind, will ever be influenced in their conduct, by fashion, interest, or opinion, and the most effectual means of making or retaining them upright, is to give them the example, and by just laws, to make such a conduct their real interest, in a legal, as well as in a moral sense ; while the most effectual way to preserve domestic tranquillity, or to make it

the opinion of the governed, that the government is for their interest, is really, to make it so.*

* That annual parliaments, and an equal and just representation, &c. would entirely prevent faction, vice, and corruption, I do not pretend; but, that they would have a most powerful tendency, to render them less prevalent, I think there can be no reason to doubt.

END OF PART I.

P A R T II.
AN
I N Q U I R Y
I N T O T H E
J U S T I C E A N D P O L I C Y
O F T H E
P R E S E N T W A R,

And most effectual Means of obtaining an honourable,
permanent and advantageous Peace.

Planning with warm benevolence of Mind,
And honest Zeal unwarp'd by party rage,
BRITANNIA'S WEAL.

THOMSON.

P A R T II.

A N

I N Q U I R Y

I N T O T H E

Justice and Policy of the present War, &c.

OF all kinds of slavery; domestic or predial perhaps excepted, the subjection of the people of one country, to the tyranny of that of another, is the most dreadful, cruel and oppressive.—The tyranny of a single despot, is without doubt extremely humiliating and

Part II.

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grievous ;

grievous ; while that of an aristocracy, is well known by sad experience, to be still more oppressive ; but to be the slaves, of a large and distant community, must be attended, with a most cruel aggravation of all the evils, to which the others are incident ; and in certain respects more grievous, than even domestic slavery ; as the governing state, from distance and other particulars, may be no competent judge, of the circumstances and ability of the governed, and not being witnesses of their sufferings, may be little affected with that sympathy and compassion, which in private life contributes so much, to the alleviation of human misery ; while the infamy of oppression, by being shared among a multitude, may be little felt, and little regarded.—In the enacting and enforcing laws, contrary to the consent of those who are to be subjected to them ; must this species of servitude, as well as all others consist.

The injustice of tyranny, or the exacting of unconditional submission, I have endeavoured to demonstrate in the first part of this work.—I shall next endeavour to discover, in what respects, the principles there advanced, may be applicable to the cause of the present contest between

tween Great-Britain and America; and whither, the rights claimed by Britain, were equitable or not.

The principal arguments, in vindication of the claims of Great-Britain, have been founded, on the rights of conquest, precedent, compact, obligations conferred, and the supposed just supremacy of the British Parliament, over all the members of the British empire.

The extent of the right of conquest, when the consequence of a just war, I have already endeavoured to point out; when founded on violence, it can confer no just right.

I have likewise endeavoured to shew, that justice, not precedent, ought to be regarded; and, that tho' the precedent might have been just, yet, the alteration of time and circumstances, might make a repetition of it improper and unjust—asserting, that conquest or precedent founded on injustice, confers right, is in fact, only maintaining, that one act of violence, vindicates and authorises another.

I have endeavoured to prove, that the right of compact, ought to depend, on the equity of the compact; and that no engagements, obtained by force or fraud,

ought to be valid or obligatory; and particularly, that no one, can enslave himself, and far less his posterity, by that means; as he can receive no recompence; all a slave possesses, being the property and at the will of his master; as such a compact is contrary, to that fundamental law of nature, the law of self-preservation; and, as it would be renouncing, not only the rights, but the duties of humanity, must be an act of insanity, and consequently invalid.

I have likewise endeavoured to shew, that obligations conferred, merit a grateful return, but that such duties are rather, the object of moral, than legal or political obligation.—Benefits conferred, being intended for the advantage, not the prejudice of those, on whom they are bestowed, they can never justly be interpreted, or converted to their disadvantage.

I have endeavoured to demonstrate, that no authority is founded in justice, which is not conducive to the benefit of the governed, as well as the governors; that the object of law and government, ought to be the general prosperity of the society; that all authority, ought to be ultimately derived from the people; and
that

that no one can in justice, tho' perhaps he may legally be bound contrary to his inclinations, by any laws, in the enacting of which he had not a vote, in common with the other members of the community, and which are not, equally obligatory on the majority, or those who approved of such laws, as on those who had disapproved of them; and, if the arguments, I have advanced in support of these doctrines, are just and conclusive, it must be allowed, that the British parliament, can have no just supremacy over any, but those, they justly represent, except in consequence of their consent and approbation, expressly declared, or tacitly implied.

The great majority of the inhabitants of Britain, that are not represented, and the little inconveniency, that they have experienced from that circumstance, has been urged with much earnestness as an argument, in favour of the justice and expediency, of the supremacy of the British parliament, over the North American provinces; but the difference of situation, makes a very material difference in the circumstances, of the inhabitants of British America, and the unrepresented part of
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the inhabitants of Britain, in this respect. This difference, has been very accurately marked, and very distinctly described, by Mr. Pultney; who observes, * “ it must appear, I acknowledge, at first sight, an extraordinary proposition to an Englishman, that there should be any bounds to the power of king, lords, and commons, which, from his infancy, he has been taught to consider as supreme; and it will be difficult for him to admit, that the parliament of England, which has protected the liberties of this country, and has exercised without controul, the power of taxing us, should not be considered, as fit to be trusted with the power of taxing the colonies; that when so great a part of the inhabitants of this kingdom, are taxed without being represented, the Americans should pretend, that the same practice ought not to extend to them, and that they can be well founded, in maintaining so dangerous a doctrine, as that the supreme power of the state is limited in its authority, and the unity of the empire destroyed; with respect to a particular part of the state, and with

* Thoughts on the present state of affairs with America, p. 16.

respect

respect to a part too, which was considered as very unequal to a contest with the whole.

But the best method of judging fairly, in questions with others, is to put one's self in the opposite place.

Let us fairly consider, for what reason it is, that the British parliament has been trusted, almost without complaint, for so many ages, with the power of taxing the unrepresented part of England, in order to see if the same reason will apply to America; for I do not deny, that parliament does in this island, tax great bodies of the people, who are not represented; and I also admit, that the actual representation of the people of Great Britain is far from being perfect. It may be true, in some measure, that every foot of land is represented; "but when we consider, that the whole counties of England send only eighty, and Scotland thirty, and Wales twelve members to parliament, out of five hundred and fifty-six, the total number of the House of Commons; it is in vain to argue, that the people of England are represented in a proper manner, by those who are elected by the owners of land; and as the constitution has allowed a numerous separate representation

presentation for the towns, it may be fairly said, that all those considerable towns which send no members, such as Manchester, Birmingham, Halifax, &c. and a great part of our people besides, are not represented in parliament.

But the true reason, why so little inconvenience has been hitherto felt, from this defect or inequality of representation, must, I apprehend; be deduced from a circumstance, which, so far as I know, has never been sufficiently attended to, by any political writer, and which, though established by no law, is of the utmost importance in this constitution. I mean the *usage* of parliament, by which it imposes all taxes in a general manner, so as not to tax any particular district or part of the kingdom, while other parts of the kingdom are not taxed; but imposes the tax on all persons possessing the property, or consuming the taxed commodity, in whatever part of the kingdom they reside. The land tax, and window tax, for example, are imposed upon all the land and windows of England, in whatever county situated, and are not imposed on Yorkshire alone, whilst all the other counties pay nothing. In
like

like manner, the malt tax is not imposed on the malt made in one county only, but on all the malt made any where in England. The duties of customs affect the importation and exportation of goods at every place, and the duties of excise extend to all exciseable goods in every part of the kingdom. There are many instances indeed of special acts of parliament, obtained upon petition of the inhabitants, by virtue of which duties are levied in particular places, and not elsewhere; but the money is, in such instances, directed to be applied to public purposes in that particular place, which precludes any objection to the tax. I believe, however, there is an instance or two, of duties levied at the port of London, particularly on coals, which duties are not levied in any other ports of the kingdom; and yet the produce of the duties is not appropriated to public purposes within London or Middlesex, and I am not at present able to explain the reason of that deviation from the general rule. But the usage, as to all public taxes for the exigencies of the state, may, notwithstanding, be considered as universal; namely, that they are not con-

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fined to any particular place, but are general over the whole kingdom.

“ The effect of this usage, with respect to the point in question, is of much more consequence than may at first sight appear. Though Manchester and Birmingham, for example, are not represented; yet, as the tax which affects them, is at the same time imposed upon all the places in the kingdom which are represented, if the tax were grievous and oppressive, it would excite a general disgust, and the voice of the people in general, being against it, would check and controul, not only the error, but even the corruption of parliament. I do not lay much weight in this case upon another circumstance, that, by the *universality* of the tax, it must affect the the members of parliament themselves, who vote for it; because it is impossible to disguise, that as things now stand, the majority of both houses may enjoy such emoluments from the crown, as will more than compensate their particular share of the tax; but as they will not only tax themselves, but their constituents, and not only their constituents, but the whole body of the people, an irresistible check must thence arise, to every remarkable

markable abuse of the power of taxation, until, by the means of a numerous standing army, the liberties of the people are entirely at an end.

“ The effect of this check, arising from the unversality of all taxes, operates, we know, with respect to Scotland, which certainly could not otherwise be protected, by so small a representation as forty-five members out of five hundred and fifty-six ; nor by the stipulation made at the union, by which the amount of the land tax is in some degree limited as to that country. That limitation is not absolute, so as to prevent the land tax from being ever increased ; but is wisely contrived in such a manner, as to render the English members, the protectors of Scotland ; for it was stipulated, that when the land tax in England should amount to 1,997,763*l.* 8*s.* 4½*d.* the land tax in Scotland should be only 48,000*l.* free of all charges, by which means, though that tax may be increased, yet no such increase can be made, without, at the same time, a proportional increase in England.

“ If parliament should deviate from this usage, and should attempt to tax Yorkshire, for example, when no other county was taxed, every one must see, that the

thirty members sent from that county, could afford to it, very little protection against the remaining five hundred and twenty-six members which compose the House of Commons; and the tax would be unjust, because in voting such a question, the other members could in no sense be considered as *virtually* representing Yorkshire, their interest not being the same with that of Yorkshire, but directly opposite; for by taxing Yorkshire, they would diminish the burden upon themselves and upon their constituents.

“ But although the protection of any particular part of the kingdom, against the proceedings of parliament, is not so much founded on the votes of the actual members sent from thence, as upon the universality of the proceedings of parliament, which therefore naturally unites, not only all the members, but the whole kingdom in opposing what is wrong; yet representation is, on many other accounts, of great moment to those places which elect members, for it immediately and intimately connects each individual of the electors, and all their friends and even acquaintance, with the representative and his friends, and thereby secures to them a degree of protection from injury and oppression, which, with respect

respect to the inferior orders of mankind, exists nowhere else in any quarter of the globe. This sort of protection extends much wider in England than it does in Scotland, because in England the right of voting descends to a much lower class; and, accordingly, the common people of England have evidently stronger feelings of independence, than those of other countries.

“ These are some of the great advantages, which the inhabitants of this island derive from representation in parliament. In the considerable towns, which send no members, there are always great numbers of voters for the surrounding counties, or for other towns which send members, who communicate protection to the rest, and the whole representatives of England, are to them a protection, against exorbitant taxation.

“ But if America were to be taxed by a British parliament, would that country enjoy the same protection, and are the members of the British House of Commons to be considered in any respect as virtual representatives of that country ?

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“ The system of laws concerning the trade of America has deprived them of many of the important advantages of Englishmen, and therefore we could not, without injustice, impose upon them the same taxes to which we ourselves are subject. Indeed, by compelling them in a manner to take our goods at our own price, and obliging them to send their goods here, to be sold in effect at our price, we lay upon them a large share of our taxes: but as we cannot justly extend to them, the same taxes which we impose upon ourselves, whilst we deprive them of an equal privilege in trade, if we were to tax them further, we must do it by a special tax to be levied in America only, and no part of it to be levied on ourselves. Instead therefore of a common interest in our five hundred and fifty-six members of parliament, to protect them from taxation, our whole body of representatives would have a common interest to tax them, in order to lessen the burden on ourselves. No murmurs from England can be expected to arise, upon occasion of any new tax to be paid by America, but on the contrary an universal joy and approbation. No member would run the risk of offending his constituents, or of losing his seat,

feat, by voting for such a tax; he would read in the countenances of his friends and acquaintance, no marks of disapprobation; he would see in his neighbourhood no symptoms of the mischiefs arising from the most oppressive taxes; the cries of the Americans, from beyond the Atlantic, would hardly reach his ears; and as he is not elected by them, there cannot exist that connection, which would bind him to afford any individual, his protection from the most illegal insult and violence.

“ This is not all; if the practice of taxing America here had been once firmly established, does any man doubt, that the executive power, the governors, judges, and officers of all kinds, would soon have been rendered entirely independent of the people and assemblies of that country, so as to leave their conduct without any controul existing there. Many steps had been taken with that view, whilst our right of taxation existed only in idea, and we had established Courts of Admiralty, and of Vice Admiralty, for the trial of a great variety of causes, without the controul of a jury, founded on a suspicion, that our Government was so disagreeable to the people, that juries there were not to be trusted, but would perjure them-

themselves, rather than give verdicts agreeable to truth and justice.

“ Can it be doubted, that if we had established the power of raising money in America by our own votes, we would soon have found, that the Provincial Assemblies were nurseries of faction, and that they tended only to clog the wheels of Government ? Is it to be supposed, that our Governors would have wished to preserve such a check upon their own proceedings ; and would we not have listened more readily to the representations of our Governors, than to the remonstrances of a helpless unprotected people ?—Would not the consequences have been, that, by degrees, the calling of assemblies in the Colonies would have been entirely discountenanced ; and would not then a degree of despotism necessarily have ensued, in every part of that continent ? Every object of ambition in that country would have been at an end ; the consciousness of security, and of independence, which is the pride and glory of free men, would have been banished from every breast ; the dispositions and principles, the baseness, treachery, cowardice, and indolence, which
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are the children of despotism, would soon have diffused themselves over every part of that unhappy country.

“It may be said, that no despotism could have been established there, because they would still have enjoyed the laws of England; but what are the laws of England, without the check of parliament upon the executive and judicial powers, and without the protection of juries; and is it certain, that we would long have suffered them to enjoy the laws of England? Had we not already, in a great measure, deprived them of juries, in questions with the Crown, by means of our Admiralty Courts? Have we not deprived the inhabitants of Canada of juries, except in criminal cases; and have we not refused that inestimable privilege to our settlements in the East Indies? How little care did we heretofore take, in the appointment of proper judges to be sent to America? Of late, indeed, some attention had been shown to that department, but how shamefully had the prerogative been for a long time perverted, in that important and sacred branch? Besides the natural tendency, which parliament uncontrolled, would have had, to impose taxes on America; the ministers of the crown, would, in future times, have

have had a peculiar incitement to increase the public revenue in that quarter, because it would have afforded an opening for great numbers of new offices, to be enjoyed by their dependants here, and executed there, by half starved and rapacious deputies.

“ It seems to me, that America, under such a system, must have stood in the same situation with respect to this country, in which the people of England would have stood with respect to the crown, if the claims of Charles the First, to levy money by his own authority, had prevailed. They would have been subject to be taxed by a power which had no natural check or motive to spare them, except what might arise from humanity and indulgence. It was argued for Charles the First, that the parliament was factious ; that it obstructed the public service ; that his Majesty could not be inclined to oppress his people, since his own glory and prosperity was connected with theirs ; that his Privy Counsellors, and those appointed by him to high offices, would naturally be chosen from amongst the principal men in the kingdom, who could not be supposed to concur in any thing injurious to the sacred liberties of their country ; that the
right

right of the crown to levy ship-money, was established by innumerable precedents, and was not a new right; and that, therefore, those who contended against it, were merely a set of fanatical factious men, who wished to make themselves of importance to the prejudice of the established constitution of the kingdom. These sort of arguments had at that time such weight, that they imposed on the understandings of a great part of the kingdom, and the pretensions of Charles the First were supported by a large proportion of the English nobility. Fortunately, however, these pretensions did not prevail, and the exclusive right of parliament to grant the money of the people, was vindicated, though not without the effusion of torrents of blood.

“ It will make little difference, that in this case it is not a single person, under the title of King, who claims the power of levying money on the Colonies, but the united power of King, Lords, and Commons; for, with respect to America, that united body of men stand exactly in the place of one Monarch; they are as much disengaged from all check or controul, arising from the persons who are the objects of taxation, as Charles I. was with

respect to the people of England ; and the experience of mankind has shewn, that free states have often exercised a more cruel and relentless tyranny, over other states, subject to their dominion, than has been usually practised by a single Monarch. Our own history proves, that the conduct of those great defenders of freedom, who established the Revolution, was not a little despotic, with respect to America.

“ Such then was the prospect of America, if they had patiently submitted to parliamentary taxation ; and I think I can appeal to the breast of every honest Englishman, whether, if he had been settled in America, and had viewed the matter in this light, he would not have sacrificed the last drop of his blood, rather than have submitted to such a claim.”

“ * From the view I have taken of the subject, I think it must appear to every man who will permit himself to judge without prejudice, that the objection of the Americans to their being taxed by this country, was not an unreasonable caprice, but of a most serious and important nature ; and that the British parliament, being neither elected by them, nor imposing at the same moment on

* Ditto page 42.

themselves and their constituents, the taxes they were to vote on America; had not those constitutional checks, to prevent an abuse of that dangerous power, which is in truth the essence of the British constitution: It will also appear, that by the system adopted with respect to the Colonies, in establishing a monopoly of their trade, we had in fact exacted from them a proportion of our public burdens; that if we had been willing to give them a representation in the British parliament, it would have afforded them a very feeble protection, unless every tax imposed upon America was to be at the same time imposed upon ourselves; that we could not, in justice, impose upon them all our own taxes, and yet tax them at the same time, by preserving our monopoly; and that even, if a method could have been devised, of fixing a proportion to be paid by them now, as a full equivalent for their present proportion of the public taxes, and that they should never pay more in future, except a similar proportion of such increase of taxes as we might hereafter make upon ourselves; yet still they would not have been put upon a fair footing with us, unless they were allowed to send representatives to parliament, in order to guard both us and themselves against any such increase; and it would have been farther

ther necessary, in strict justice, that our laws of trade with respect to America should have been fixed, so as to prevent any possible increase of the burden upon them in that respect; for as these laws are not of a general nature, but are made to burden America only, without at the same time burdening our own constituents, the British parliament would, in all questions of that kind, have wanted that constitutional check, which is the essence of the power of taxation, and the supposed representatives from America would have been able to make too feeble a defence in such sort of questions against the united interest of all the other members of our British House of Commons. And after all, these colonies would still have suffered many disadvantages by the want of a legislative power amongst themselves."

"* But from what has been said, I apprehend it to be clear and manifest, that the power of taxing America cannot be trusted with the British parliament, with the same safety, as the power of taxing Britain; that the Americans would be on a worse footing than us, and would be destitute of those checks, which controul in Britain the abuse of taxation; and that when we insist

* Ditto, page 45.

upon putting them on that footing, we desire what is unreasonable for us to ask, and for them to submit to.

“Ought they not then to contribute to the burdens of the state? They certainly ought, and by the restrictions imposed on their trade, they certainly do contribute very largely; but perhaps they do not contribute their full proportion; the long possession of their exclusive trade, has, I believe, given such advantages to the British manufacturers, that they are now able to furnish a great part of our manufactures to the Americans, cheaper than they could be purchased elsewhere; and therefore, the confining the Americans to take these from us, is no hardship upon them, and is, in truth, unnecessary for us. I believe too, that much relaxation might be made with respect to the regulations of their trade, with great advantage to them, and without any material injury to us; and if that were done, they certainly ought to contribute in another way, to the public burdens of the state.”

The unrepresented in Britain, besides being deprived of all parliamentary interest, should remember, that an
infamous

infamous and iniquitous kind of traffic may be carried on, between the electors and the elected at their expence; and that usage in many cases, is but a very slight security.

This defect of representation in the British constitution, has by some been called, the nature, and spirit of the constitution, and on this ground, they have attempted to vindicate the justice, of asserting and maintaining the supremacy of the British parliament, over the unrepresented inhabitants of America; as if justice, ought to be regulated, by the nature and spirit of the constitution; and not, the nature and spirit of the constitution, by justice; or, as if one defect, evil, or abuse; was sufficient authority, for establishing and justifying another.

If the principles I have advanced, and the deductions I have drawn from them, are agreeable to truth and equity, it must be evident, that the supremacy of the British parliament, over the North American provinces, cannot be justly vindicated, on any of the arguments, that have yet been adduced in support it; and, that not only the parliament, but even a majority of the people,
or

or members of the empire, cannot justly possess such supremacy, or have any just right, to enact and enforce laws, unless these laws, are equally obligatory, and affect themselves equally, as the other members of the community; one part of the people, having no just right, to violate, oppress, or enslave the other; and how far, such general laws, affecting a whole empire, composed of countries, differing in climate, soil, manners and interests, might in all cases, be equally well adapted, to the nature and circumstances of each, and consequently, agreeable to justice and sound policy, supposing, no particular taxations or restrictions, affected the trade of any of them, in exclusion to the others, none, can be at any loss to determine.

The supremacy of the British parliament over the colonies, has however, been exercised in various instances, and in various manners; and it has been legally declared, * that this kingdom has power, and of right ought to have “ power, to make laws and statutes, to bind the “ colonies and people of America, in all cases what- “ ever.”—That the arbitrary power, thus claimed and

* Declaratory act.

Part II.

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legally

legally asserted, would have been grossly abused; I have too high an opinion, of British generosity, and British justice to suppose; nay, I am fully satisfied, that if the British parliament, thro' misinformation or inadvertency, had been guilty of any flagrant acts of injustice or oppression, that upon cool reflection, and being undeceived, they would readily have endeavoured, to correct the error they had committed, would have execrated the very idea of their former conduct, and made every possible reparation—That the distance and increasing power of America must have operated, as a very powerful additional security against such exertions, I am fully satisfied; and I acknowledge, that requiring an equal contribution, according to their circumstances, with their fellow citizens of Great Britain, for the common benefit and defence, could be deemed no unreasonable demand; especially, when moderation and judgment were manifested, in the choice of the tax for that purpose, as well as in the mode of carrying it into execution; and, that there was not any great probability, making the most ample allowance, for the loss sustained by the monopoly of the trade, and the expence of the civil establishments
of

of the Americans, of their being burdened equally, with their fellow subjects of Great Britain : nor do I alledge, that the exercise of such power is illegal ; but I maintain that it is unjust, as well as those laws and that constitution, which authorizes it ; and that prudence requires, that it should not be submitted to, for every one I believe, will readily allow, that it is not easy to prescribe limits, to the usurpations and oppressions of mankind, or determine, to what length violence may be carried, when tamely submitted to, when authorised by law and precedent, and supported by power.

The British parliament hath indeed, made no direct attempt, to enslave the persons of the Americans ; such a violation of justice, would have been too gross and palpable, to meet the approbation of Britons ; but, they have done it indirectly ; for, if the principles I have endeavoured to develop are just,—involuntary taxation, is personal slavery ; and according to the degree of the former, is that of the latter ; if the taxation is slight, so is the slavery ; but, if the taxation is so grievous, as notwithstanding the utmost efforts of personal labour, to leave the inhabitants or the far greater part of them,

mere necessities only, then personal servitude is carried to the greatest possible extremity.

Direct involuntary taxation, though it has never been viewed in this light, so far as I know, yet it has been represented by every friend of justice, and of mankind, not only as an act of violence, but as a proceeding, which renders all private property insecure; as there is no possibility of determining to what length it may be carried; nay, in a manner annihilating it*, “for what property have I in that, which another may by right take, when he pleases, to himself.” The exercise of such a power, has justly been compared, by the celebrated Doctor Franklin, to raising contributions in an enemy’s country.

But, however zealous in this respect, the advocates against American taxation have been, not one of them consistent with my knowledge, has ever questioned the right of Britain, to tax America indirectly, by restricting and monopolizing her trade, and cramping her industry, though without her consent, and contrary to her inte-

* Locke on Gov. Part II. Sect. 140.

rest; but have either, tacitly acquiesced in the justice of it, or have been, strenuous advocates for its support.

I readily acknowledge, that I cannot perceive, the propriety of such a distinction; and I hesitate not, to deny the justice, of this mode of involuntary taxation, or the enforcing of such a monopoly. It is of little importance I think, with respect to the justice of taxation, whether it is direct or indirect, internal or external; and I am of opinion, that the general and vague assertion of this monopoly being necessary, for regulating and supporting the general trade of the empire, is by no means, sufficient for justifying it.

But tho' I am perhaps, the first who has openly and avowedly, denied the justice of these commercial restrictions, there can be no doubt, but the Americans, as well as their supporters in this country, were not ignorant of that circumstance; tho', for prudential and political reasons, they did not think proper to declare it, and those who would persuade us, that the evils the Americans experienced, and the great loss, they supposed they sustained, by means of these restrictions, was

not

not the real and ultimate cause of the present war, have either viewed matters very superficially, or mean to deceive us. For a proof of this assertion I appeal, to the general tenor of the conduct of the Americans, prior to the passing of the stamp act; and even, before they were delivered, from the dangerous neighbourhood of the French and Spaniards, by the conquest of Canada, and the cession of the Floridas; to the little reluctance with which they bore, the post office tax, and the tax on sugar, &c. The grievances they principally complained of, as the establishment, of the Courts of Admiralty, and of Vice-Admiralty; the rendering of their governors, judges, &c. independent of them, and denying them the benefit of trial by jury, in certain cases, &c. were only, the natural and unavoidable consequences, of their infringements and illegal opposition to these restrictions; and were really regulations, which that opposition, rendered absolutely necessary, if the navigation act was to be enforced.—The tea tax, at the time hostilities commenced, was neither a new nor a burthenfome tax; and they had the strongest assurances, by means of my Lord Hillsborough's famous circular letter, that no other
taxes

taxes, were intended to be imposed; and from the bad success of former attempts, they had reason to be satisfied, that no ministry, would ever have hazarded another.—The plan adopted by government, for relieving the distresses of the East India company, was to procure a market, for part, of the great quantity of tea they had in their warehouses, by supplying the Americans with that article cheaper, than they formerly were, or otherwise could procure it: which circumstance, evidently, could prove a grievance, to the smugglers of tea only, a benefit, to every other person; and certainly could be, no urgent cause for insurrection.—It is particularly to be observed, that the first outrage of importance, after the repeal of the stamp act, committed by the Colonists, was the destroying of his Majesty's armed schooner the *Gaspee*, at Providence in Rhode Island, the 10th of June 1772, on account of the vigilance of the commander, in preventing their smuggling, and evading the navigation act; and that it was not, till the end of the succeeding year, that the East India company's tea arrived in America, and was destroyed at Boston, the 18th Dec. 1773.

In

In a word, we have the greatest reason to conclude, that the leading men among the Americans, were influenced in their opposition to the mother country, by no other motive, than the desire of freeing their countrymen, from this cruel monopoly, and either rendering them independent, or putting them, on a state of equality, with their fellow citizens of Great Britain. —To attribute it to other motives, would in my opinion, add nothing to their honour.

That the attempts to impose and enforce new taxes, contributed to accelerate the period of this opposition, there can be no reason to doubt; not so much indeed, on account of their importance or the danger of the precedent, as on account of the pretence they afforded, for irritating and inflaming such of their countrymen, as were not engaged in foreign trade, and were not sufficiently sensible of the evils; they suffered by the monopoly; but more particularly on account, of the pretence they afforded for opposition, without their being under the necessity, of shocking the general prejudices of the people of this country, by openly avowing the true cause of it.—They were sufficiently sensible, that
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the commercial part of the nation, would in every thing be influenced by their private interest; and to prevent, the endangering of their American debts, or any diminution of their present profits, from an interruption of trade, by an American non-importation agreement, or other circumstance; that they, as well as the West India planters, would become their most active and zealous friends, aiders, and assisters; and endeavour to obtain, a temporary profit to themselves, at any expence to the nation, by procuring an immediate redress to their grievances; whereas, were they originally and openly to declare, that their sole inducement to resistance, was to render themselves independent, or free themselves, from the cruel and oppressive restrictions, imposed on their trade by the mother country, they were satisfied, that the merchants, dreading the loss of the American trade entirely, or a great diminution of the exorbitant profits, which some of them enjoyed by means of the monopoly, as well, as the total loss of their American debts, and the monied interest, a reduction in the value of stocks, from the loss of America, that in place of friends and partizans, they would become, their most

rancourous and determined enemies—nay, so general are commercial prejudices, that even those, who are the greatest sufferers by them, are wonderfully attached to them; and so compleat, would have been the odium and disapprobation of their conduct, that even the sons of faction, or those, who endeavoured to supplant the then Ministry, durst not openly, have appeared in their favour, or supported their measures.

The principles of political œconomy, adapted and carried into practice by European states, not only with regard to their own Colonies, but with regard to each other, have been established from inductions, false either, in fact, or in reason; and the methods employed for carrying them into execution, have not been less injudicious than unjust.—Mankind, blinded by jealousy, ambition, envy or avarice, have been influenced, by the most illiberal, vicious, and impolitic motives.—Mercantile avarice and prejudices, have made their way into the senate house, and the councils of Sovereigns—Monopoly, which is found to favour so much, the interest of the private trader, it has been thought would in every case, prove equally beneficial, to states and to empires; and

and, that those principles, which were with propriety adopted in the counting house, might with equal propriety and still greater advantage be employed, for regulating the interests of nations; in consequence, of which principles and prejudices, legislators, have often been more influenced, by the clamorous importunity of partial interests, than by an extensive view of the general good; and measures have been pursued, very prejudicial to the whole commercial part of mankind, as well, as to particular nations, and very different, from what a juster and deeper policy would have suggested.

The mercantile spirit, ever true to what it deems its own interest, has generally been successful in promoting the private, interested views of particular traders, particular merchants, or companies; but whenever it acted on more generous motives, it has commonly, pursued improper measures, involved government and the publick, in misfortune and distress, and become a sacrifice, to its own avarice, violence, or mean artifices.

Constant application, to the minutiae and practice of business of most kinds, seems to cramp and contract the faculties and powers of the mind; as well, as enforce

those selfish, illiberal views and prejudices, which many professions are too apt to inspire ; and to render the professors of them altogether incapable of conceiving, comprehensive schemes of publick utility, founded on liberal and enlarged principles.—The mercantile spirit in particular, by seeing every thing thro' the medium of avarice, and with the contracted view of present profit, is utterly incapable of distinguishing, with sufficient precision and accuracy, when or where, private interest, confides with that of the publick, and wherein the latter, properly consists.

It is to this mercantile spirit, and the system founded upon it that we owe, the neglect, and discouragement of the improvement, of the wastes at home ; that the inhabitants, in place of being employed, advantageously in their own country, have been induced, for more than a century past, by every alluring bait, to relinquish their native soil, and migrate to distant desarts, that, they may still further weaken the parent state, by the support and supplies they must perpetually require ; and it is from the same cause, that we go thousands of leagues, in quest of fishing grounds, on a barren

barren inhospitable island, and neglect those on our own coast.

It is the same spirit, that in so many cases has checked the industry, and so much retarded the real, solid, permanent improvement of Britain, that under the pretence of enriching us, has involved us, in most of our late wars, and consequently has loaded us, with the far greater part of the grievous burden of our public debt.

This spirit, has particularly exerted its baneful influence, in our conduct toward our colonies ; and it has been justly observed by the ingenious Dr. Adam Smith, in his inquiry into the nature and causes of the wealth of nations *, that “of the greater part of the regulations concerning the Colony trade, the merchants who carry it on, it must be observed, have been the principal advisers. We must not wonder, therefore, if, in the greater part of them, their interest has been more considered than either that of the Colonies or that of the Mother Country.” And it has been observed by the same author, that † “the maintainance of the monopoly has hitherto been the principal, or more properly, perhaps,

* Vol. II. Page 184.

† p. 224.

the sole end and purpose of the dominion which Great Britain assumes over her Colonies. In the exclusive trade, it is supposed, consists the great advantage of Provinces, which have never yet afforded either revenue or military force, for the support of the civil government, or the defence of the Mother Country. The monopoly is the principal badge of their dependency, and it is the sole fruit which has hitherto been gathered from that dependency. Whatever expence Great Britain has hitherto laid out in maintaining this dependency, has really been laid out to support this monopoly. The expence of the ordinary peace establishment of the Colonies amounted, before the commencement of the present disturbances, to the pay of twenty regiments of foot; to the expence of the artillery, stores, and extraordinary provisions with which it was necessary to supply them, and to the expence of a very considerable naval force which was constantly kept up, in order to guard, from the smuggling vessels of other nations, the immense coast of North America, and that of our West India Islands. The whole expence of this peace establishment was a charge upon the revenue of Great Britain, and was,

at the same time, the smallest part of what the dominion of the Colonies has cost the Mother Country. If we would know the amount of the whole, we must add to the annual expence of this peace establishment, the interest of the sums which, in consequence of her considering her Colonies as Provinces subject to her dominion, Great Britain has upon different occasions laid out upon their defence. We must add to it, in particular, the whole expence of the late war, and a great part of that of the war which preceded it. The late war was altogether a Colony quarrel, and the whole expence of it, in whatever part of the world it may have been laid out, whether in Germany or the East Indies, ought justly to be stated to the account of the Colonies: It amounted to more than ninety millions sterling, including not only the new debt which was contracted, but the two shillings in the pound additional land tax, and the sums which were every year borrowed from the sinking fund. The Spanish war, which began in 1739, was principally a Colony quarrel: Its principal object was to prevent the search of the Colony ships which carried on a contraband trade with the Spanish main.

This

This whole expence is, in reality, a bounty which has been given in order to support this monopoly."

It must be acknowledged by every ingenuous mind, that the support we afforded the Americans in these wars, as well as in other instances, proceeded more from motives of self-interest than any benefit we particularly intended them, and that they are therefore, very little, beholden to us on this account.

That we engaged, and continue in the present war, from the same principle and the same motives as these former wars, the maintainance of this monopoly, I think, there can be no just grounds of doubt; though a trifling tax, which some, I admit, were eager for enforcing on its own account, was the ostensible cause; for, if the Americans were desirous of being exempted from the monopoly, the ministry and people of Britain, particularly the monied and commercial interests, were equally zealous for supporting it; and government obviously had recourse to compulsory measures, rather, for supporting authority in America, sufficient for enforcing the navigation act, than direct taxation; for ministry had given the most solemn assurances that no other taxes would be imposed,

posed, and had often declared, that this trifling tea tax, which was rather expensive than productive, was enforced merely because it could not be repealed, without derogating from what they thought the dignity of parliament; besides, the Americans often acknowledged that if the monopoly was dropt, that tax and others would readily be submitted to. But supposing that the trifling introductive tea tax was the sole cause of the war, now that all pretensions to taxation are disclaimed, that cause can no longer operate, hostilities can be continued only, with the design of enforcing the monopoly, and this war, as well as the others, must in every respect be a commercial war—What a perversion of reason?—A war of commerce!—Of commerce, which by deffusing general and mutual benefits, should serve as a bond of peace and cement of society.—A war which has cost the empire torrents of blood, of fellow citizens' blood; and must have cost Britain already, exclusive of what it has cost America, including the additional land tax, and sums borrowed from the sinking fund, not under seventy or eighty millions sterling, independent of the grievous losses sustained by individuals, and the nation in general, by the depredations.

of war, but more particularly, by the fatal check given to private credit, to industry, agriculture, and manufactures, besides burdening the nation with a very great annual expence, as interest and charge of collection, not under two millions sterling; a sum independent of the enormous expences incurred by former wars, and on former occasions, on the same account, or what might be still necessary, to conquer and retain the North American Colonies, contrary to their interest and inclination, which, in my opinion, must greatly exceed any revenue that could reasonably have been expected to be obtained from them, directly or indirectly, though they had not been desolated by war; but thus it is, that avarice, commonly defeats her own purposes, and in endeavouring to obtain an unjust advantage over others, injures herself.— This, however, is one of the notable, the extraordinary expedients for enriching a nation, which the mercantile system unfolds; according to which, the maintainance of the monopoly is amply to recompence this profusion of blood, this wondrous waste of treasure.

It has been asserted, that our trade with the North American Colonies, in the year 1773, was nearly equal
to

to the trade we carried on with the whole world, at the beginning of this century ; and the opinion that the monopoly of their trade, was of the utmost benefit and importance to this country, appears indeed, to be general, if I except Mr. Pulteney, who seems, to doubt it (tho' he says *, the Colony trade is extremely profitable to Britain) and to think †, that we are able, independent of the monopoly, to furnish a great part of our manufactures to the Americans, cheaper, than they could be purchased elsewhere, and Dr. Smith, who maintains, that it is no absolute advantage to Britain ; I must confess, that the reasons he assigns for this opinion, or for regarding all restrictions with respect to trade as unnecessary and impolitic, appears to me, neither just nor satisfactory. He says, however, that || “ the advantages of Colonies to their respective Mother Countries, consist altogether in those peculiar advantages which are supposed to result from Provinces of so very peculiar a nature as the European Colonies of America, and the exclusive trade, it is acknowledged, is the sole source of all those peculiar advantages.”

* Considerations, &c. p. 19. † Thoughts, &c. p. 45.

|| Smith's Enquiry, Vol. II. p. 196.

“ In consequence of this exclusive trade, all that part of the surplus produce of the English colonies, for example, which consists in what are called enumerated commodities, can be sent to no other country but England. Other countries must afterwards buy it of her. It must be cheaper therefore in England, than in any other country, and must contribute more to encrease the enjoyments of England, than of any other country. It must likewise contribute more to encourage her industry. For all those parts of her own surplus produce, which England exchanges for those enumerated commodities, she must get a better price than any other countries can get for the like parts of theirs, when they exchange them for the same commodities. The manufactures of England, for example, will purchase a greater quantity of sugar and tobacco of her own colonies, than the like manufactures of other countries, can purchase of that sugar and tobacco. So far, therefore, as the manufactures of England, and those of other countries, are both to be exchanged for the sugar and tobacco of the English colonies, this superiority of price gives an encouragement to the former, beyond
“ what

what the latter can in these circumstances enjoy. The exclusive trade of the colonies, therefore as it diminishes, or, at least, keeps down below what they would otherwise rise to, both the enjoyments and the industry of the countries, which do not possess it; so it gives an evident advantage to the countries, which do possess it over those other countries."

"This advantage, however, will, perhaps, be found to be rather what may be called a relative, than an absolute advantage; and to give a superiority to the country which enjoys it, rather by depressing the industry and produce of other countries, than by raising those of that particular country, above what they would naturally rise to in the case of a free trade."

It may perhaps seem rash and presumptuous, to those, who have not with much attention studied this subject, yet, from a full conviction of the justness of it, I hesitate not to assert, (and I flatter myself, that in another work, I shall be able to prove it) that the monopoly of the colony trade, has been of little or no advantage to this country, either absolutely or relatively; nay, perhaps a disadvantage, by giving a wrong direction, or too strong

a byass, to many branches of the national industry. But as the proof of this proposition, depends on principles, which at present, would require too much time to unfold, and being intimately and necessarily connected, with subjects foreign to the present purpose, I must defer, the most material circumstances till another occasion, and satisfy myself at present, with observing, the small influence, that the loss of the colony trade, has had on British industry, and British opulence; and that any diminution of them from the loss of that trade, is principally, if not solely to be attributed, to the before-mentioned cause, of that monopoly, having given a disadvantageous tendency, or too strong a byass to trade and industry, to be soon corrected, or not to be severely felt: but, he has lived with little observation, and is little acquainted with the nature of credit, trade and industry, who would attribute, the present distress and misery of the country, to that circumstance alone.—Independant of the additional taxes, the losses, the high rate of labour, freight, and insurance; the being deprived of the benefit, of a direct trade with the enemies country, and the other calamities, incident, to an expensive and bloody war,

war, the great demand of government for money, and the high terms it gives for the use of it, has greatly raised the value of that article, relative to others; has wonderfully contracted private credit, there having been nearly a general run or demand, on private debtors by their creditors, with a view of lending to government on more advantageous terms; which run, by encreasing the quantity of commodities for sale, (for the purpose of raising money for discharging the debts) and at the same time, diminishing the demand for them, has tended still farther, to augment the relative value of money, raise the rate of interest, occasion, the exaction of usurious premiums, and a farther contraction of credit; and many thousand families, who before the commencement of the present war, had reason to think themselves in opulent circumstances, from this cause, have been ruined or involved in great distress; and it is particularly unfortunate for the country, that many of those who employed borrowed capitals, were men, not only of the greatest enterprise, but greatest abilities, for those of very mean parts, will seldom, hazard much on their own exertions. In a word, debtors, exclusive of interest, have in some cases

cases been obliged to pay, nearly double the value of what they received, though nominally the same; and industry, enterprise, and abilities have been sacrificed, to the rapacity of extortioners.—To harpies, who have preyed, on the very vitals of the community; to contractors, to placemen, and pensioners; to the venal, the vicious, and the corrupt.—Voltaire has well observed, that “war is a gulph, that swallows up all the channels of plenty. Ready money, that principle of all good and all evil, levied with so much difficulty, flows into the coffers of an hundred stock jobbers and farmers of the revenue, who advance the sums demanded by the state, and by these advances purchase the privilege of plundering the nation.”

Industry has been grievously taxed, by a high rate of interest, as well as by additional publick exactions.—The value of land and its produce, having for these some years past, been little above half its former value, agriculture, and the landed interest, have suffered exceedingly; and tho’ there is nothing, in the prosperity of which, the nation, if it was sensible of its real interest, is so nearly concerned in, yet, no attempts have been made

made by parliament for their relief, tho' practicable in many ways, and without injuring the nation, in any respect.—The distresses of the landed interest, has diminished their demand, for the productions of the manufactures, and most of those, who have rent or annuities to pay, or whose livelihood depends upon their industry, have suffered extremely.

Government in 1773 borrowed, the sum of £.7,000,000 sterling, on the following terms.

They gave the lenders credit for £. 7,000,000
bearing 3 per cent, interest

An annuity on ditto, for 29 years, at $3\frac{1}{2}$
per cent, or 245,000*l.* per annum,

which, valued at about 15 years purchase, and interest at 5 per cent, is

equal to - - - 3,709,545

49,000 Lottery Tickets, valued at 3*l.*

equal to - - - 147,000

And $\frac{2}{3}$ of a year's interest, of 7,000,000,

at 5 per cent, - - - 140,000

Total £. 10,996,545

Part II.

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Brought

	Brought over	£. 10,996,545
Sum borrowed,	-	7,000,000

Ballance £. 3,996,545

Valuing the 7,000,000l. three per cent,
 at 4,200,000l. the then market price,
 and on that account, deducting from
 the above, the sum of - 2,800,000

There still remains, as a præmium to the
 lenders, over and above receiving, five
 per cent. interest, for the money lent £. 1,196,545

But, if the capital is ever redeemed, as
 government, binds itself to pay
 7,000,000l. for that 4,200,000l. in
 that event, the difference of - 2,800,000

is to be added to the national loss,
 making in all the sum of - £. 3,996,545

On a loan of 7,000,000l. more than would have been
 incurred, by government borrowing that sum, at 5 per-
 cent. interest.

Govern-

Government, March 7th, 1781, borrowed	£. 12,000,000	
For which they gave the lenders credit, for	18,000,000	
3 Per Cents ; and		
4 Per Cents	- - - -	3,000,000
Likewise the profit of 48,000 Lottery		
Tickets, which valued, at 3l. profit		
each, amounts to	- -	144,000
And, $\frac{2}{3}$ year's interest, at 5 per cent, on		
12,000,000l. amounting to	-	240,000
To total of which being	- -	£. 21,384,000

It is evident, that the publick on redeeming that sum, must lose equal to the difference, between the amount of these sums, or of 21,384,000l. and 12,000,000l. being 9,084,000l. besides, an annual loss of 60,000l. before redemption, more than would have been incurred, by borrowing at 5 per cent.

I am sensible, that the dread of the reduction of interest, in time of peace, makes the lenders insist, on this mode of borrowing ; but notwithstanding that circumstance, and the urgency of the demand, I deny the necessity of it.—By what means, this evil might be prevented, without any prejudice to foreign trade ; or whi-

ther, publick loans are at all requisite, I shall not at present examine ; as without a full investigation of the subject, reason, might appear absurdity ; and I am afraid, there is but little probability of such measures, however just and practicable, being approved of, or carried into execution ; or that the publick good, will prevail over partial interests, in Britain, so long as the electors, pay little or no regard, to the abilities and virtue of their representatives ; or without, a more equal and just representation, and the restoration of annual parliaments.

When, the demands of government for money, are so great, and the terms given by it, for the use of it, are so advantageous, we need not be surpris'd, at the present contraction of private credit, the decrease of demand for the produce of industry, and the distresses of the people, tho' we were to attribute no part of them, to the loss of the monopoly.

But, supposing, the profits of such monopolies, ample, as avarice itself could wish ; still, still I maintain, that they are impolitic as unjust.—For, one part of a nation, state or empire, must be more injured by them, than the others

others can be benefited ; and in so far, they must prove prejudicial, to the state or empire.—If Britain gained, by restricting the trade of Ireland, or by the monopoly of the colony trade, was it not, at the expence of Ireland and her colonies ?—Such regulations may prove extremely prejudicial, but however advantageous to partial interests, in no instance can prove beneficial, for a nation, or empire at large.—If Britain gained, by cramping the industry and retarding the improvement of Ireland, the British isles, could not be benefited by that means ; nay, the reverse, is not only presumable, but capable of demonstration.—The other parts of the empire, must not only lose, equal to what Britain gained by such monopolies, but in other respects, it must prove highly injurious to them, by preventing or retarding, their prosperity and improvement, the increase, of their population and opulence ; and must injure, even the monopolizing country, in so far as their circumstances diminish, their demand for her productions. By such a conduct, one part of the empire, treats the others as enemies, as tributaries or slaves, not, as fellow citizens, or fellow creatures.—It is, one sister robbing another,

or

or the parent her offspring, under the pretence of the public good, and I will once more affirm, with little, or no benefit to herself, however profitable, to particular merchants and manufacturers.

Perhaps, no people ever injured another, without in some respect or other, injuring themselves ; for it is certainly the interest of nations, as well as individuals, and more particularly of fellow citizens, not to injure, oppress or enslave, but to comfort, cherish, and assist each other.

Believe me, my countrymen, if ye enslave your colonies, it will hardly be possible for you, to preserve the degree of liberty ye presently enjoy --- America, conquered by the sword, by the sword must be retained ; and all history evinces, that to conquer and be conquered, to enslave and be enslaved, are in effect the same.

Think, on the multitude of mercenaries which must be employed, the great addition of power which that circumstance, and the disposal of the great number of new and profitable offices it must occasion, will arm the executive branch of the state. Think, on the many additional temptations for a profligate and corrupt parliament to
betray

betray their trust and enslave you, either seperately or in conjunction with the executive power. Think, how fatal these circumstances might prove to the priviledges and liberty ye enjoy, should an ambitious and tyranical monarch mount the throne, or should ye make an improper choice of representatives. Think, of the great weight of taxes, with which ye must be burthened to support these mercenaries. Think of these circumstances, and dread, nay prevent the event.

Had your conduct toward the Americans been upright, politic and just ; had you, in place of restraining, encouraged, cherished, and assisted their trade and industry, promoted their growing greatness, and riveted them to us by interest and affection ; what an illustrious figure ! what a stupendous fabrick would this empire have exhibited to the world ! an empire great in arts and in arms, founded on liberty, and supported, by opulence, fortitude and justice ; renowned, for wisdom and humanity, the curb of restless unjust ambition, the support, of the Protestant interest, and the balance of power in Europe, the dread of tyrants, and refuge of the oppressed.

Such

Such this empire might have been, and such notwithstanding many unjust and impolitical measures, from the superiority of her constitution, and the lenity of her conduct towards her dependencies, comparatively with other nations, this kingdom, in a great measure was, before the Americans, preferring death to servitude, had recourse to arms, and engaged, in the dreadful conflict, in the seemingly, so unequal contest ; and singly opposed, the mistress of the ocean, in the zenith of her glory.

What is it now ?---Alas, my country !—dismembered, distracted by internal factions, heaving under an enormous load of additional taxes, attacked by numerous foreign foes, and involved in all the horrors of a cruel civil war, ---when we turn our eyes to America, there is little to be seen but scenes of misery, of horror, or of carnage, but ravaged fields, desolated villages, and conflagrating cities, but blood, rapine, and devastation, or little to be heard amid the clamours of war but the shrieks and groans of the wounded or the dying, the cries of the widow and the orphan, the lamentations of sorrow, of want and misery, and the wild whoop of the blood-thirsty savage.---In the north, the iron scepter of despotism and Popery is erected, and may now tyrannize with
unbounded

unbounded and equal sway over the mind and the body. At home are we oppressed with grievous additional taxes, and preyed upon by usurers and extortioners; our property sunk in value; private credit almost annihilated; useful industry and improvement languishing under the greatest disadvantages, and the poor's rates encreasing, notwithstanding the drain occasioned by the navy and army;---our flag has been insulted with impunity by the neutral powers, our trade interrupted, merchant ships captured, and the enemies fleets have rode triumphant on our coasts:---numerous families in different parts of the empire have been involved in distress or overwhelmed with misery; and every post brings us accounts of the loss or the murder of some of our friends or relations.

These, these are the fatal effects of this destructive war, and that monopoly which occasioned it; and, from hence we may learn how impolitic is injustice.

Many plans have been proposed for terminating the war, preventing the farther effusion of human blood, and those other dreadful calamities it occasions.

1st. Some have imagined America wished only to be put on the same footing she was before the year 1763, and might be long and profitably retained on these terms. This scheme was adopted, taxation disclaimed, and commissioners sent out, but it failed of success.

2dly. Some have proposed granting them very favourable terms, and then attempting to govern them by influence.

3dly. The plan carried into execution which has been an attempt to maintain the monopoly by force, and by great efforts to terminate the war by the conquest of America.

4thly. Others, have proposed terminating the war by acknowledging the independency of America.—This last method Governor Pownall says*, “ is much like the system which an ironical proverb recommends, *of dying to save charges.*” I must confess however, that I think it preferable to either of the former.

5thly. Mr. Pultney’s plan which seems to be nearly the same with that proposed by the colonies in the year 1754, with the difference of there being no governor general, and admitting representatives from America to sit in the

* Letter to Dr. Adam Smith.

British House of Commons, and vote in all questions, except as to taxes imposed here *.

The 6th and last which I remember to have seen or heard of, is, that of an incorporating union.

There are many weighty objections to this last plan, which seems not to have been relished either by America or Ireland; besides the great distance of America, the trouble, expence, and loss of time to which attendance would subject the American members, as the unavoidable ignorance of the British members, with respect to the real circumstances and situation of their fellow citizens in America, and all those evils and inconveniences which withdrawing the seat of legislation from a country occasions, &c. &c.

Such an union, though called incorporate, would, in fact, be nominal only, unless the number of representatives from each of the countries or contracting parties were equal, or very nearly so; for, if otherwise, that country professing the majority of votes, could carry every point in opposition to the others; who, by adopting such a measure, would in reality voluntarily subjugate them-

* Considerations, &c. p. 5.

felves, and arm that state against themselves, not only with absolute power over the revenue, but likewise over the sword or executive power of their respective countries.

From the state of representation of each country, it appears evident, that such of the Scotch as approved of entering into an incorporating union with England, and were not gained over by craft or corruption, must have relied more on the good faith and generosity of the English nation than the number and influence of their representatives, or the articles of union: the former, it is evident can have no great weight, and the incorporation, by intrusting the sword and purse of the state in the hands of the majority, or in other words, with the parliament of the larger state, and by various other means, must greatly weaken any efforts of that people, for maintaining the latter inviolate; denying them a national militia, tends to compleat this subjection: though this union has been productive, of the most happy consequences to both kingdoms, the articles of union, never having been materially altered or violated to the prejudice of the smaller kingdom; yet, it was a degree of confidence.

confidence in the Scots, which justice required not, and which neither prudence nor sound policy warranted; and I believe other nations or provinces, especially those which are less happily situated for such a union, will not be very desirous of following the example.

Perhaps the following plan of a foederal league or union, may prove more acceptable to America, and be found less exceptionable than any of the schemes hitherto proposed. It is not, however, without much diffidence, that I lay it before the public, as I am afraid, my zeal for the general happiness and prosperity, may have blinded me so far, as not to perceive its defects.

I would propose, that each kingdom or state should have a council or parliament; that they should either retain their present, or adopt some other democratical form of government; perhaps the best scheme for each, would be to adopt the British constitution, improved by a more just and equal representation, annual parliaments, &c. and adapted where necessary, to any peculiarity in their circumstances.

That

That each, if agreeable, should have a house of peers, and a house of commons; the peers to be created by the common sovereign of the empire.

That the executive power should be invested, in the common sovereign.

That each of the parliaments should be invested, with the supreme legislative authority, in their respective kingdoms or states, the crown having a negative; and that each parliament, kingdom or state, should in every respect, be independant of the others, unless in so far as they are bound by the common league or union.

That this union, should not be influenced by partial interests, and have no object, but the general prosperity, the common good.

That the members, of the different kingdoms and states, which compose the empire, should mutually enjoy, the rights of naturalization and succession.

That each state, should independently, pay its own officers civil and military, impose and levy taxes, contract and discharge debts, &c.

That

That appeals in matters of litigation, should be finally determined by the house of peers, or supreme council, in each respective state.

That there should be a convention of state, congress, senate, or states general, for assisting in managing the general concerns of the empire, guarding the particular interests of their respective states, and advising, and even controuling the monarch, in particular cases, &c.

That each particular state or parliament, should, exclusively, have the choosing of their own delegates or representatives, in the imperial senate; and that the representatives should be removed or changed, according to the pleasure of their respective constituents.

That these representatives or deputies, should be accountable, in all cases, to their respective constituents; and act in their senatorial capacity according to their instructions.

That there should be a prime minister, secretaries, judges, board of treasury, admiralty, &c. for each particular state, as well as for the empire in general.

That the states should pay a certain contingent, according to their respective abilities, for expences incurred,
in

in what all are interested ; as supporting the expence of majesty, furnishing a certain quota of ships, troops, &c. for their common defence. Such leagues, should have for their object only, the mutual benefit of the contracting parties, without any intention of injuring, invading, or conquering others.

That the congress or senate should determine any differences between particular states.

That there should be a common standard of value, according to which the contingents payable in money by each state, ought to be determined.

That each state should have an exclusive right to coin, or alter the standard of their money, or value of their currencies, at pleasure ; and to enter into treaties with each other, or with foreign states merely commercial.

That there should be no general regulations with regard to commerce or navigation ; except, that all ships of foreign nations, or navigated by foreign seamen, should be prohibited from carrying on the trade, unless in very particular cases, between the contracting states ; and that no foreign goods, should be imported into any part of the empire, except in ships belonging to the empire, and of which

which the master, and two-thirds of the crew, are subjects of the empire; or in ships of that nation, of which the merchandise imported, was the genuine growth or manufacture.

That the executive officers of each state, should be accountable for their public conduct to the parliament of that state; and those of the empire, the monarch excepted, to the imperial senate or congress; who should be obliged to give a faithful account of their proceedings, to their respective parliaments.

That the votes in the imperial senate, or number of representatives of each state or parliament, should be according to the degree, in which they respectively contribute to the common prosperity and defence; and should increase or diminish according as the opulence, population or power of the state encreases or diminishes.

Peace or war should be determined, and all treaties of alliance should be concluded, by the imperial senate.

For determining as to war, taxes, funding, or concluding treaties of alliance, the approbation of two-thirds of the senate should be required: For other matters, a simple majority may be sufficient.

The executive power should not have a right, to withdraw the troops of any state, from that state, contrary to, or without first obtaining its consent, unless, authorised by the imperial senate.

That the East India trade and Newfoundland fishery, should be enjoyed in common, by every part of the empire.

In the distant states the sovereign should invest, a particular person or persons, with the power of pardoning.

On these principles, I have drawn up the following articles of consideration and perpetual union, between the kingdoms and states, of Great Britain, &c. &c.

ARTICLE I. The name of the confederacy shall henceforth be, the British Empire, or the British and American Empire; and that of the sovereign, Emperor.

II. The united kingdoms and states, hereby, severally enter, into a firm league of friendship with each other, for their common defence against their enemies, for the security of their liberties and properties, the safety of their persons and families, and their mutual and general welfare.

III. The

III. The executive power of the empire shall be vested, in the person of his most sacred Majesty George III. king of Great Britain, &c. as Emperor, or supreme executive magistrate, to be enjoyed and exercised, by him and his heirs, under the same limitations and restrictions, which he enjoys the crown of Great Britain, &c. and such others, as may hereafter be mentioned in these articles. In other respects, each kingdom and state, shall enjoy and retain, as much as it may think fit, of its own present laws, customs, rights, privileges, and peculiar jurisdictions, within its own limits; and may alter and amend its own constitution, as shall seem best to its own members. Each kingdom and state reserving to themselves alone, the exclusive right of regulating their internal government, and of framing laws in all matters, that are not included in the articles of the present confederation, and which cannot any way prejudice the same.

IV. That for the more convenient management of general interests, delegates shall be elected annually, on the first Monday of ———, without the formality or necessity of writs being issued for that purpose, for forming

ing the imperial senate, congress, or states general, to meet in general congress, on the first Monday of —, in each year, at that place, where the emperor generally resides, which must be within the limits of that kingdom or state, which contributes most to the common defence, to the general welfare.

V. That the power and duty of the imperial senate, shall extend, to the determining on war and peace, the entering into all alliances and treaties, commercial excepted, and the nomination of all ambassadors, residents, &c. those, employed on commercial business, or on the private affairs of the Emperor, &c. excepted.—To the settling, all disputes between the kingdoms or states, if any such should arise, and the planting new colonies, where proper.—The imperial senate shall also make such general ordinances, thought necessary to the general welfare, of which particular parliaments cannot be competent, viz. To establish and regulate the posts from one state to another, in the whole extent of the empire, and to receive on the letters and packets sent by post, the necessary tax to defray the expence of that establishment. To fix the weights and measures, throughout the whole extent

extent of the empire.—To have the power and right to determine and fix the sums necessary to be raised, and the disbursements necessary to be made.—To borrow money, and to create bills, on the credit of the empire.—To fix the standard or currency, for regulating the value of the different pecuniary quotas.—To determine, the number of troops and seamen to be raised. To establish rules for judging in all cases, the legitimacy of the prices taken by sea or land. The imperial senate shall chuse for president, one of their members, and for secretary, the person whom they shall judge, fit for that place, and they may adjourn, at what time of the year they think proper.

The imperial senate shall never engage in any war, nor contract any treaties of alliance, or other conventions, except to make peace, nor determine or fix the sums necessary to be raised, or the disbursements necessary to be made, for the defence or advantage of the empire, or any particular state; nor create bills, nor borrow money, on the credit of the empire; nor resolve on the number of troops, to be raised for land or sea service, but by the united consent, of two thirds of the members;

members ; and the members in these cases to act only, by the authority, and in conformity to instructions, from their respective states.—In other cases all questions to be determined by a simple majority, and the members to act according to instructions, if instructed ; if not, agreeable to their particular judgments.

No delegate shall be chosen for more than three years, out of six, and no person invested with any public employment whatever, in the extent of the empire ; and receiving by virtue of that employment either by himself, or thro' the hands of any other for him ; any salaries, wages, or emoluments whatever, shall be chosen a delegate.

The imperial senate, shall publish every month, a journal of their sessions, except what shall relate to treaties and alliances, when it shall appear to them, that these matters ought to be kept secret. The opinions pro and con of the members or senators, shall be entered in the journals as often, as any of the members shall require it, and there shall be delivered on demand, to any one of the senators, on his particular requisition, a copy
of

of the journal, except of the parts above-mentioned ; to be carried to the legislative body of his respective state.

Each of the above-mentioned states, shall preserve the right and power, to recall at any time, whatever of the year, their delegates, or any one of them ; and to send others in the room of them, for the remainder of the year ; and each of the said states shall maintain their delegates, during the time of the general assembly.

At every meeting of the senate, one half of the members returned, exclusive of the proxies, shall be necessary to make a quorum ; and each delegate to the senate, shall have a vote in all cases, and if necessarily absent, shall be allowed to appoint any other deputy from the same state, to be his proxy, who may vote for him.

That the senators or deputies, may appoint committees, while sitting, and shall be allowed freedom of speech, and such other privileges as are necessary, for fulfilling the intentions for which they are delegated.

That the execution of all deeds, by the imperial senate, shall be in the name of the imperial senate, with, and by the approbation and authority, of the Emperor and imperial states.—The Emperor having irrevocably delegated

delegated to the imperial senate, that part of the executive power, which according to these articles, it may legally exercise.

VI. No state in particular, shall either send or receive embassies, begin any negotiations, contract any engagements, form any alliances, concludes any treaties, with any King, Prince, or power whatsoever, without the consent of the United States, assembled in general senate, commercial excepted.

Two, nor several of the said states shall not have power to form alliances, or confederations, nor conclude any private treaty among themselves, without the consent of the United States, assembled in general senate, and without the aim and duration of that private convention, be exactly specified in the consent, commercial always excepted.

There shall not be kept up by any of the said states in particular, any vessels or ships of war, above the number judged necessary by the assembly of the United States, for the defence of that state, and its commerce; and there shall not be kept on foot, in time of peace, by any of the said states, any troops above the number determined

terminated by the assembly of the United States, to guard the strong places or forts, necessary for the defence of that state; but each state shall always keep up a well disciplined militia, sufficiently armed and equipped, and shall be careful to procure, and keep in constant readiness, in the public magazines, a sufficient number of field pieces and tents, with a proper quantity of ammunition and implements of war.

No state shall engage in war, without the consent of the United States, assembled in general senate, except in case of actual invasion of some enemy, or from a certain knowledge of a resolution, taken by some nation to attack them, and in that case only, in which the danger is too urgent, to allow them time to consult the other states.

Each of the said states shall submit to the decisions of the assembly of the United States, in all matters or questions reserved to that assembly by the present act of confederation.

VII. All the expences of war, and all other disbursements, that shall be made for the common defence, or general weal, and that shall be ordered by the assembly

Part II.

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of

of the United States, shall be paid out of the funds of a common treasury.

That common treasury shall be formed by the contribution of each of the aforesaid states, in a ratio compounded of the number of the inhabitants, and their ability to contribute, in each state, or any other method more equitable; and in order to fix the quota of the contribution, every three years the inhabitants shall be numbered, and that enumeration shall be sent to the assembly of the United States.

The taxes appropriated to pay this quota, shall be laid and levied in the extent of each state, by the authority, and orders of its legislative body, within the time, fixed by the assembly of the United States.

VIII. The number of delegates or senators to be elected, and sent to the imperial senate by any state, shall be regulated from time to time, by the quota of men and money, &c. furnished by that state, for the common defence, or common weal, and encrease or diminish accordingly; the original number of senators for the empire, varying according to the subsequent encrease

or decrease of the extent, population and riches of the empire.

IX. The Colonel and all the inferior officers in the army, the Captain and all the inferior officers in the navy, of any troops levied, or any ships fitted out by any particular state, and all the civil officers for transacting the particular business of any state, except with the consent of the parliament of that state, either tacitly implied, or expressly declared, to be natives of that state.

X. That the Emperor shall have no right to withdraw the troops of any state from that state, contrary to, or without obtaining its consent, unless authorized by the imperial senate.

XI. That the members of the different states which compose the empire, shall mutually enjoy the rights of naturalization and succession.

XII. That the East India trade and Newfoundland fishery, shall be enjoyed in common by every part of the empire*.

* There are probably many mistakes and omissions in the above articles, from the incapacity of the author, and the haste in which they are drawn up; and they are undoubtedly capable of much improvement.

According to these articles and this plan of confederacy, which it is equally for the interest and dignity of Great Britain to grant, and America to embrace, the crown must resign to the imperial senate, the power it presently exercises of making war and peace, and contracting alliances with foreign states; in other respects, this confederacy would in no manner necessarily affect or alter the British constitution; and this alteration would certainly improve it—Some have disputed* the constitutional right of the crown, to the exercise of this power, and it undoubtedly was in many instances the antient usage, to have an express article in treaties, when they were made by the sole act of the crown, that the ratification of parliament should be obtained.—By the present practice, the minister who advises and executes such measures, is accountable to parliament and the public for his conduct, and may be impeached and punished, though acting by the direct and avowed orders of the crown, if acting, contrary to the interest of the nation—This then, in effect, is little better than a nominal branch of the prerogative, which indeed may be abused, but seldom

* Davenant's works, best edition.

with

with impunity—His present Majesty, I am convinced, would make much greater sacrifices for the good of his people, than resigning a power, which no good man would wish to exercise; the power, of involving his fellow creatures in war and misery.

By such a confederacy, and the creating so many distinct states and parliaments, independent of each other, except in so far, as they are bound by the articles of the confederacy, for their mutual benefit, many important advantages would be obtained, which could not be enjoyed, if the whole empire was subjected, to one sovereign state and parliament—While all preserved liberty and independence, each, would enjoy all the internal advantages of a small state, and all the external advantages of a great empire; the weakness of each, would be assisted and protected, by the united strength and efforts of the whole; and the force and violence of faction, the tide and current of popular frenzy, by being thus broke and divided, would be wonderfully weakened and retarded; for it is not to be supposed, that the same factious views, or the same frenzy, would influence different and distant parliaments and provinces, at the same time; and, when
such

such a factious spirit or popular frenzy, broke out in any state, it is probable, that they would be quelled or moderated, by the influence and remonstrances of the others, or by reflection, before matters could come to extremity, or before the other states could be infected by them—The division of power and salaries, from multiplying of ministers of state, &c. by dividing the views of faction, and lessening the importance of each particular object of it, would likewise have a great tendency to diminish its force—The people would then, have little to dread from the power of the crown, as any attempts, against their rights and liberties would be more dangerous, at the same that there would be less temptation to make such attempts; for it is presumable, that this division of the empire into states, would not render the people, less clear sighted in perceiving any violation, or less powerful, resolute and determined, in maintaining their just rights, though less liable, to invade those of others; for how different soever the interests or views of different states, in other particulars, all being equally interested, all would combine, in support of their common rights and privilege; to which they would be the more attached, on
account

account of the state of perfection, in which they enjoyed them—enslaving America, might be the means of enslaving Britain, but the freedom of America, would have a great tendency, to preserve British liberty.

The executive power would seldom be forced into arbitrary acts from an opposition to salutary measures, by ambitious, turbulent factions; and there would be little temptation to an unprovoked exertion of them, either from hopes of success or of benefit.---The monarch might enjoy, in peace and serenity of mind, the advantages of his situation, and the prosperity of his subjects; while the people, freed from unnecessary foreign wars, the tyranny of office and of faction, might experience all the felicity of which human society is susceptible.

I am sensible, that from the general prevalence of mercantile prejudices, and the supposed necessity of laws for regulating the general commerce, the investing each state, with the exclusive right of regulating its own commerce, currency, &c, and of contracting commercial alliances, whether with foreigners, or any or all of the confederated states, may appear at first, absurd and ridiculous, and a capital defect in the plan; but, when

it is considered, that the inhabitants of each state, must be the best judges, nay, the only competent judges, of those particular regulations, which will prove most advantageous for that state, and that those regulations, which benefit most, each particular state, must prove, most beneficial for the empire, it must be acknowledged, that these general regulations, though adapted and practiced I believe, by every commercial nation, must in effect always prove prejudicial *—The American form of government, as established by the articles of confederacy, signed by the delegates at Philadelphia the 4th of October 1776, appear to me, in this respect, extremely defective, and in many others, very ill calculated for supporting, the natural rights of mankind ; many of the articles, injudicious and oppressive ; particularly, with regard to the mode of imposing taxes or subsidies, and of arraying or levying forces ; besides, the powers it grants to Congress, really establishes an oligarchy, the most un-

* On these principles, perhaps, it might be advantageous for the island of Great Britain, to be divided into three or four states ; (smaller divisions in a large empire, would be attended with obvious inconveniencies ;) but, I am not desirous of innovations or alterations in the form of government, where the grievances are not felt or complained of, or without palpable and very urgent cause.

just, oppressive, and tyrannical of all governments; the most subversive of every idea of justice, virtue and humanity; where the people, in place of enjoying happiness, liberty and peace, groan under the inexpressible and complicated oppressions, not of one tyrant only, but of a combination of tyrants, who can employ their united interest, force and invention, to oppress, and most cruelly tyrannize over their countrymen and fellow creatures—By these articles, they arm Congress, not only with the power of the sword, but likewise with that of the purse; not only with the executive, but likewise with the general legislative, and ultimately, with the judicial authority; by the nomination of judges, power of pardoning, &c.—In a word, they establish, as complete, and as powerful, and as arbitrary an aristocracy, or plurality of despots, as ever, was established among mankind.

In this confederacy should be comprehended, not only the kingdom of Great Britain, and the thirteen hostile provinces of America, but the kingdom of Ireland, which consequently, would be relieved from the grievances she presently complains of, would be exempted from Poynings and other obnoxious laws, particularly the

unjust, absurd declaratory act—Likewise, Canada, St. John's, Nova Scotia, Bermudas, East and West Floridas, and the West India islands.

If the natives of your East-Indian territories, are, from the nature of their climate, or other circumstances, incapable of supporting a free government; and, if you cannot prevail with yourselves, to relinquish them entirely; endeavour at least, to render their condition, freer and happier, than it would have been without your assistance—The great object of true policy, being to render society as happy, as situation and circumstances will admit.

Unhappy Indians! how dreadful have been your sufferings, what evils have ye not experienced, from the unfeeling cruelty of avarice, and the abuse, of unjust, unmerited power?—Ill-fated country! when, shall there be a period to your calamities?—The voice of nature, calls aloud in your favour—The dictates, of reason and humanity, shall perhaps, at least be heard; shall awake to compassion, the finer feelings of the soul, and inspire Europeans, with a just sense of your sufferings.

May

May ye, my countrymen, be the first. May ye, give the glorious example. Soon, soon may ye make some compensation for the many calamities with which you have overwhelmed them, by allowing them the invaluable privilege of trial by jury ; by establishing property on a solid and permanent basis ; and by framing for their use, a code of laws, founded on principles, of equity and humanity ; and consequently, adapted to their nature and circumstances.—By aiding, and assisting them ; by promoting, their prosperity and happiness ; and by rendering their condition, superior to that of the neighbouring nations, or to what, they ever before experienced.

Such measures, by augmenting the population, and riches of these territories, would prove equally conducive to your interest as to your glory. By these means, O ye Britons, ye would establish your fame, on the most permanent basis ; your renown would be transmitted, to the latest posterity. Future brahmins, would record your virtuous deeds, and impressed with the deepest gratitude, peradventure, might say, all these blessings, we owe to Britons : honoured, beloved and revered, by your oriental

brethern ; an admiring world, would applaud your conduct ; and “ human feelings, weep delight.”

France, cannot offer more advantageous terms to America, than those I have proposed.—Many circumstances make Britain, a more eligible ally to British America, than France ; and it is humbly presumed, that America may derive as much advantage, from the protection and alliance of Great Britain ; as Great Britain, possibly, can from America.

If America refuses these terms, I must confess, that in my opinion, such refusal can proceed only, from infatuation and delusion.—She will really be prolonging, all the hardships, miseries, and calamities of war, to strengthen and rivet more firmly, those chains prepared for her, by the defects of her present, political institutions—Would really, be contending for servitude and misery, and blindly spurning these advantages, which an union with the parent state, would procure and secure her. According to these terms, Britain, proffers not only, the full and free enjoyment of her natural and just rights, but to defend and protect them, from invasion and violation ; the different states becoming, the
mutual

mutual guardians of each others liberties.—She proffers, a participation in her fishings, East and West India commerce, &c.—Nor could such an union prove injurious, even to private or partial interests.—The rights, of mutual naturalization and succession, would certainly, prove highly beneficial to all; and to be a senator, peer, representative, general, admiral, &c. of a great and potent empire, would certainly, be more advantageous and more honorable, than of smaller and less powerful states.—The states of America indeed, might not have so many votes in the senate, as the other states; till their growing greatness, gave them a just title to it; but such an union, would not deprive them of sufficient influence, over the forces and revenue, of their respective states, as to prevent, their employing them when necessary, in support of their just rights.

If America neglects the favourable opportunity, and rejects an union with Britain, on equitable terms; an union, for their mutual interest and happiness; what dreadful calamities, may she justly apprehend; how many evils, seem impending over her? What horrors I foresee, from civil discord; from the jarrings, of so many

many different and contending interests ; but above all, from the fatal, but unavoidable consequences, of that very defective, and tyrannical form of government she has adopted.

That a disjunction of the empire, would likewise in many respects, prove prejudicial to Britain, cannot be denied ; more especially, if the Americans, by means of intrigue, corruption or force, became the slaves, or abject tools of those, who oppose her on every occasion ; and from their vicinity, style themselves, her natural enemies. — Unhappy mortals ! that neighbourhood, should thus be deemed, a natural cause of enmity.

But, however desirable, honourable or advantageous, the unity of the empire might prove ; let us not, my country-men, endeavour to preserve it, by unjust, by unworthy means.

Know, that dignity consists, in virtue alone, not on obstinately persevering, in an unjust cause ; and, that no union, can be advantageous or permanent, that is not founded, on mutual interest, and mutual affection.

That

That whoever attempts, to deprive another of his life, liberty or property, without his consent ; attempts, an act of violence and injustice.—Whoever executes it, commits robbery or murder ; and that those who are injured or threatened with injury, are authorised by the law of God and nature, not only, to resist and defend themselves, but to renounce, all allegiance and connection.

Before we blame the Americans, for the part they have acted, let us apply, the case of America to ourselves, and under such circumstances ; say, say ye Britons, what would ye have done ?—Would you have bore, the galling yoke of commercial bondage ?—Would ye have tamely acknowledged, a just right in any distant power, to govern you in all cases ?—If I may judge, from the virtues and noble deeds of your ancestors ; if, by that undaunted spirit, for which ye are distinguished ; that native vigour, and genuine love of liberty, which ye have shewn on other occasions, I am sure ye would not.—No, with bare undaunted breast, you would sooner, have braved every danger, endured every hardship, have shed your dearest blood, roamed the desarts
of

of Tartary, or sought refuge, among the frozen mountains of Delectaria—when Delectaria was free.

Away, away then, with every absurd pretence, every mean, and avaricious motive for oppression; endeavour not to treat others, as ye would not be used yourselves; and be careful, to secure your own independence, by not invading that of others.—Just heaven! how long shall wretched mortals, prove the bane of each others felicity?

O! for words of energy and force, suited to the dignity, the importance of my subject; and calculated to inspire, those sentiments, and that enthusiastic ardour, that warmth of benevolence, my soul now feels. Spirit of Philanthropy! assist my weak endeavours, and inspire mortals with a just sense of the only means of promoting their own happiness. Illustrious philosophers! ye favoured of Heaven, and friends of human kind, aid my feeble efforts, and persuade mankind, that in injuring others, they injure themselves; that vice, is the ultimate cause of all moral evil; and that happiness can consist, in virtue alone. Aid me, in convincing my countrymen, how much it is for their interest, as well as for their honour, in place of oppressing

pressing their offspring, to become the generous guardians of their just rights ; to learn, to regard their interest and prosperity, as their own ; to cherish Ireland, to promote her prosperity, and to treat her, “ with all, the “ soothing softness of a sister’s love.” To endeavour to improve their own natural and internal advantages, without invading the rights of others, or restricting their trade, by unjust exertions of power : To consult their own happiness, in promoting that of others ; and] to be

“ * Without ambition brave,

“ Proud, not to conquer men, but save ;

“ A friend to the weak, a foe to none, but those

“ Who plan their greatness on their brethren’s woes——

by such a conduct, they would be beloved, be revered by all.

Shall Britain, proud of her liberty, justly famed for a bold and generous freedom of thought ; for humanity, and nobleness of sentiment ; renowned for virtue and for wisdom ; longer follow, the mean, vicious, and impolitic dictates of avarice and ambition ; and in imitation of those tyrants she despises, endeavour to oppress her own offspring, and violate the rights of humanity : rather, may she resume her wonted character and conduct, and

* Poetical Epistle to George Washington, Esq.

Part II.

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by exertions of the sublimest virtue and wisdom, endeavour to make some recompence, for the errors into which, in imitation of others, she has inadvertently fallen ; and by the greatest efforts, retrieve the evils, those errors have occasioned. May she afford the world a splendid example of valour, in vindication of her just rights, and of moderation and virtue, in the exercise of it. May she endeavour, by every gentle, every generous means, to recover the affection, friendship and alliance of those, who by their undaunted spirit, manly exertions. and ardent love of liberty, have proved themselves her genuine descendants.

But, what do I say ; before now, perhaps, the irrevocable resolution is formed, and the evils she has occasioned, hath finally determined America, to reject all terms of accommodation and alliance, however equitable or advantageous.

I cannot, however, easily persuade myself, that America can be so blinded by resentment, as to become so far insensible to her own interest, to the voice of reason and consanguinity, as to adopt such a measure, or to reject a union, on which our mutual prosperity, and the safety
and

and preservation of our common religion and liberty depends.

If she has, in some respects, been injured by Britain, she should likewise remember, that she has been indebted to Britain, for many and important obligations.

She should remember, the former happy intercourse of good offices, the felicity she then enjoyed, and the prosperity, that was every where diffused. That we are connected, by the ties of consanguinity, speak the same language, and are interested in the preservation, of similar institutions.

She should remember, that the common efforts, had raised the British empire, to the highest pitch of human renown and felicity; and had, during the course of many glorious years, served as the great barrier of the liberties of Europe, and as the strongest support of the protestant religion, against the baneful schemes of popery and despotism; and that, if again united, the empire could have little to dread, even tho' opposed by an host of foes.

Let her remember, the dreadful evils that threaten her, and from which, an union, must entirely exempt her. That a black cloud, surcharged with wrath, and big with every woe, seems impending over her, and ready to burst, on the cessation of foreign war, with a dreadful explosion, the violence of which, threatens her people, with all the calamities and horrors, of despotism, rapine, and civil butchery.

That contending for liberty, she hath thrown herself, into the arms of despotism; of those, who hold their native sons, in vassalage and chains; who are equally desirous, of the ruin of Britain and America; who differ from her, in language, laws, government, religion, manners and customs—The most dangerous of all neighbours and connections—The sons of intrigue and ambition—The enemies, of civil and religious liberty.

Let her reflect, that if this, or some similar plan is adopted, that Britain, requires nothing of her, that is unreasonable, or contrary to her real interest—She wishes only, to revive mutual affection, and to preserve it, by every solemn, sacred, and endearing tie—She courts her to be free, and solicits an union, not with any view to
partial

partial interests, but for supporting the common liberty, and promoting, the general prosperity and honour of the empire—Though the people of Britain, from the novelty and peculiarity of the case, have been so far deceived, as to imagine, that they were enforcing justice, in endeavouring to compel you, to contribute according to your abilities, for the common defence, equally with your fellow-citizens in Britain; yet, they regret those evils, they suppose ye have wantonly, and without any just cause, brought upon yourselves,—amid their own calamities, they are not insensible, to the sufferings of others; and even, for you they mourn.

If the voice of reason can be heard, amidst scenes of carnage, and the repercussive clangors of war, there can be little doubt, but America, will eagerly embrace an union, on honourable, equitable, and advantageous terms. But, if the minds of men, should be so far blinded, by passion, prejudice, and resentment, as to reject every mode of alliance, however just and reasonable; it would then be the duty, as well as the interest of Great Britain, to imitate, in this case, the illustrious example of imperial Rome, and let her Generals know, the soul-transporting pleasure,

pleasure, the great Flaminius felt, upon restoring liberty to Greece; by publickly proclaiming American independence*.

Let Britain, adopt every equitable, every honourable measure, for stopping the further effusion of human blood, and calamities of war.---Let her acknowledge, American independence; let her withdraw, her forces from that country; and, if notwithstanding, America, wantonly prolongs the war, she must be responsible to God and man, for all the miseries attending it---A conduct, I cannot suppose she could adopt, as it would be infinitely more for the interest, of a country so extended and so thinly peopled, to cultivate the arts of peace, and recover from the ravages it has sustained, than carry on the most glorious and successful war.

Too much slaughter have we known, wide and extended, has been the scene of desolation. Let us then, my countrymen, employ every just, every honourable expedient, for sheathing the blood-thirsty sword, and mitigating, the miseries of our species. Reflect, on the calamities already experienced; nor, be the unjust cause, of another widow's or an orphan's tear. Let your magnanimity, let your justice, let your humanity; nay,

* Including Canada, Nova Scotia, &c.

let

let your interest, if incapable of being influenced by nobler motives, determine you, to addopt such measures. Think, of the miseries you must experience, from the continuance of the war——of the expence and calamities, through which America must be conquered, or unjustly retained; and of the extreme frivolousness, of the object for which you are contending; a mean, avaricious, mercantile monopoly; the advantages of which, are at least very questionable, and most doubted by those, who are best acquainted with the subject. Could America by any conduct injure you more than by retaining your forces coupéd-up inactive in fortresses within her territories, and by absorbing your treasures.

It has indeed, been very commonly affirmed, and very generally believed, that if America was independent, we could not possibly preserve, our West Indian settlements.—Vain supposition. It cannot be imagined, that Spain will always continue, the dupe of French intrigue, and many circumstances, render the alliance of America with France and Spain, too unnatural to be permanent, however agreeable to their present circumstances,

stances, and however well suited to their present pursuits; and there can be no doubt, but this unnatural connection will be dissolved, however soon, these causes are removed, or discontinue to operate; and it is probable, that the unprovoked attacks of France and Spain, may recoil upon themselves with redoubled violence, when America, freed from unjust restrictions, and encreased in power, population, and riches, is allied with Britain, and zealous in the cause. Trust me, that in injuring America, ye are injuring, your natural allies, your best friends.

If heaven in its wrath, should inspire America with a passion for conquest, the neighbouring settlements, of either of these powers, certainly present more tempting objects, to avarice and ambition, than the British West-Indies, and if the gold mines of Mexico and Peru, do not fall the first sacrifice, it is probable, that Cuba, or St. Domingo will—Nay, if the Americans, upon being declared independent, from the heat of resentment, should be induced to captivate any of the British settlements in the West Indies, they would soon repent of their conduct, and perceive, that they had been exhausting themselves,
expending

expending their power and riches, in injuring, their natural and best allies, and would soon be glad to restore them, for the protection, and assistance of Britain, in forwarding their other pursuits.

Their distance from Europe, and the natural strength of their country, being so great, as to afford them little reason, to apprehend danger, or require assistance, from European land forces; it must be a great naval power alone, that can either injure them, or render them effectual service.—Besides, they cannot trade with any European nation, with such advantage as with Britain, who could grant them, many valuable privileges with regard to the fishings, and protect them, in the enjoyment of them.—Their interest, would likewise coincide with that of Britain, in many other most important particulars; as supporting the cause, of liberty and their common religion, against the efforts, of despotism and superstition; while they would be connected, by all the potent and endearing ties, of similar political institutions, laws, manners and customs; by intermarriages, and by speaking the same language.—They would in-

Part II.

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deed, in effect, continue for long, to be in a manner the same people.

It appears obvious to me, that declaring America independent, as well as uniting with her on just and liberal principles, would dissolve, her present unnatural and dangerous connections, as rendering them, no longer necessary ; and be, the most probable means of obtaining an honourable, and permanent peace, as removing the cause, or defeating the ends or intentions, for which the other powers engaged in the war.—For it is apparent to all, that they were actuated by no motive, but that of weakening the British empire, by dividing it, or by prolonging, the pernicious and ruinous effects of civil discord ; and of sharing, in the supposed great advantages, of the American trade ; by either of these measures, they would be allowed a free trade with America, and civil discord, would soon terminate.

I propose a disjunction, only, upon the supposition, that an union cannot be effected, on honourable and equitable terms, as I am fully satisfied, that such an union, would be for the common advantage, of all the contracting parties ; highly beneficial for Britain, and
greatly

greatly more so for America.—I am however, far from supposing, that the plan I have suggested, is incapable of improvement, or that others preferable, may not be devised ; but, whatever measures ye adopt, let virtue and and liberality of sentiment, enlarged and comprehensive views, influence and direct, your councils and your conduct, and you cannot possibly deviate, from the line of true policy, or fail to promote, the general happiness, and prosperity. Yes, my countrymen, the more strictly ye adhere, to justice, rectitude and humanity, in this case as in all others, the more wisdom ye will show, the more general, and permanently beneficial will be the consequences ; and it imports you much, not only, to come to some speedy resolution, for terminating, the dreadful calamities of a ruinous war ; but to weigh well the circumstances, on which these resolutions are founded ; for on your present determinations, in a great measure depends, the future prosperity, or adversity of your country.

F I N I S.

A P P E N D I X.

FOR the information of such, as are little, or not at all acquainted, with the nature of criminal justice in England, or rather, with the political institutions in England, for maintaining inviolate, the natural personal rights of individuals, I have subjoined the following extract, from the ingenious Mr. De Lome's account of the English government.

Of Criminal Justice.

When a person is charged with a crime, the magistrate, who is called in England *a justice of the peace*, issues a warrant to apprehend him; but this warrant can be no more than an order for bringing the party before him: he must then hear him, and take down in writing his answers, together with the different informations. If it
appears

appears on this examination, either that the crime laid to the charge of the person who is brought before the justice, was not committed, or that there is no just ground to suspect him of it, he must be set absolutely at liberty : if the contrary results from the examination, the party accused must give bail for his appearance to answer to the charge, unless in capital cases ; for then he must, for safer custody, be really committed to prison, in order to take his trial at the next sessions.

But this precaution of requiring the examination of an accused person, previous to his imprisonment, is not the only care which the law has taken in his behalf ; it has farther ordained, that the accusation against him should be again discussed before he can be exposed to the danger of a trial. At every session the sheriff appoints what is called the *grand jury*. This assembly must be composed of more than twelve men, and less than twenty-four ; and is always formed out of the most considerable persons in the county. Its function is to examine the evidence that has been given in support of every charge : if twelve of those persons do not concur in the opinion that an accusation is well grounded, the party is immediately

diately discharged; if, on the contrary, twelve of the grand jury find the proofs sufficient, the prisoner is said to be indicted, and is detained in order to go through the remaining proceedings.

On the day appointed for his trial, the prisoner is brought to the bar of the court, where the judge, after causing the bill of indictment to be read in his presence, must ask him how he will be tried: to which the prisoner answers, *by God and my country*; by which he is understood to claim to be tried by a jury, and to have all the judicial means of defence to which the law intitles him. The sheriff then appoints what is called the petty jury: this must be composed of twelve men, chosen of the county where the crime was committed, and possessed of a landed income of ten pounds by the year: their declaration finally decides on the truth or falshood of the accusation.

As the fate of the prisoner thus intirely depends on the men who compose this jury, justice requires that he should have a share in the choice of them; and this he has through the extensive right which the law has granted

granted him, of challenging, or objecting to, such of them as he may think exceptionable.

These challenges are of two kinds. The first, which is called the challenge to the *array*, has for its object to have the whole pannel set aside: it is proposed by the prisoner when he thinks that the sheriff who formed the pannel is not indifferent in the cause; for instance, if he thinks he has an interest in the prosecution, that he is related to the prosecutor, or in general to the party who pretends to be injured.

The second kind of challenges are called, to the polls, (*in capita*): they are exceptions proposed against the jurors, severally, and are reduced to four heads by Sir Edward Coke. That which he calls *propter honoris respectum*, may be proposed against a lord impannelled on a jury; or he might challenge himself. That *propter defectum* takes place when a juror is legally incapable of serving that office, as, if he was an alien; if he had not an estate sufficient to qualify him, &c. That *propter delictum* has for its object to set aside any juror convicted of such crime or misdemeanor as renders him infamous, as felony, perjury, &c. That *propter affectum* is proposed

proposed against a juror who has an interest in the conviction of the prisoner : he, for instance, who has an action depending between him and the prisoner ; he who is of kin to the prosecutor, or his counsellor, attorney, or of the same society or corporation with him, &c. *

In fine, in order to relieve even the imagination of the prisoner, the law allows him, independantly of the several challenges above mentioned, to challenge peremptorily, that is to say, without shewing any cause, twenty jurors successively †.

When at length the jury is formed, and they have taken their oath, the indictment is opened, and the prosecutor produces the proofs of his accusation. But, unlike to the rules of the civil law, the witnesses deliver their evidence in the presence of the prisoner : the latter may put questions to them ; he may also produce wit-

* When the prisoner is an alien, one half of the jurors must also be aliens : a jury thus formed is called a jury *de medietate linguæ*.

† When those several challenges reduce too much the number of jurors on the pannel, which is forty-eight, new ones are named on a writ of the judge, who are named the *tales*, from those words of the writ, *decem or octo tales*.

nesses in his behalf, and have them examined upon oath. Lastly, he is allowed to have a counsellor to assist him, not only in the discussion of any point of law which may be complicated with the fact, but also in the investigation of the fact itself; and who points out to him the questions he ought to ask, or even asks them for him*.

Such are the precautions which the law has devised for cases of common prosecutions; but in those for high treason, and for misprision of treason, that is to say, for a conspiracy against the life of the king, or against the state, and for a concealment of it †, accusations which suppose a heat of party and powerful accusers, the law has provided for the accused party farther safeguards.

First, no person can be questioned for any treason, except a direct attempt on the life of the king, after three years elapsed since the offence. 2. The accused party may, independantly of his other legal grounds of

* This last article however, is not established by law, except in cases of treason; it is done only through custom; and the indulgence of the judges.

† The penalty of a misprision of treason is, the forfeiture of all goods, and imprisonment for life.

challenging,

challenging, *peremptorily* challenge thirty-five jurors. 3d. He may have two counsel to assist him through the whole course of the proceedings. 4. That his witnesses may not be kept away, the judges must grant him the same compulsive process to bring them in, which they issue to compel the evidences against him. 5. A copy of his indictment must be delivered to him ten days at least before the trial, in presence of two witnesses, and at the expence of five shillings; which copy must contain all the facts laid to his charge, the names, professions, and abodes, of the jurors who are to be on the pannel, and of all the witnesses who are intended to be produced against him*.

When, either in cases of high treason, or of inferior crimes, the prosecutor and the prisoner have closed their evidence, and the witnesses have answered to the respective questions both of the bench, and of the jurors, one of the judges makes a speech, in which he sums up the facts which have been advanced on both sides. He

* Stat. 7 Wil. III. c. 3. and 7 Ann. c. 21. The latter was to be in force only after the death of the late pretender.

points out to the jury what more precisely constitutes the hinge of the question before them; and he gives them his opinion, both with regard to the evidences that have been given, and to the point of law which is to guide them in their decision. This done, the jury withdraw into an adjoining room, where they must remain without eating and drinking, and without fire, till they have agreed unanimously among themselves, unless the court give a permission to the contrary. Their declaration or verdict (*verdictum*) must (unless they choose to give a special verdict) pronounce expressly, either that the prisoner is guilty, or that he is not guilty, of the fact laid to his charge. Lastly, the fundamental maxim of this mode of proceeding, is, that the jury must be unanimous.

And as the main object of this institution of the trial by a jury is to guard accused persons against all decisions whatsoever by men invested with any permanent official authority *, it is not only a settled principle, that the

* “Laws,” as *Junius* says extremely well, “are intended, not to trust to what men will do, but to guard against what they may do.”

opinion

opinion which the judge delivers has no weight but such as the jury choose to give it; but, besides, their verdict must comprehend the whole matter in trial, and decide as well upon the fact, as upon the point of law that may arise out of it: in other words, they must pronounce both on the commission of a certain fact, and on the reason which makes such fact to be contrary to law*.

This is even so essential a point, that a bill of indictment must expressly be grounded upon those two objects. Thus, an indictment for treason must charge, that the alledged facts were committed with a treasonable intent (*proditoriè*). An indictment for murder must express, that the fact has been committed with *malice prepense*, or aforethought. An indictment for robbery must charge

* Unless they choose to give a *special* verdict.—“ When the jury,” says Coke, “doubt of the law, and intend to do that which is just, they “find the *special* matter, and the entry is, *Et super totâ materiâ petunt “discretionem justiciariorum.*” Inst. iv. p. 41.—These words of Coke, we may observe here, confirm beyond a doubt the power of the jury to determine on the whole matter in trial: a power which in all constitutional views is necessary; and the more so, since a prisoner cannot in England challenge the judge, as he can under the civil law, and for the same causes as he can a witness.

that

that the things were taken with an intention to rob (*animo furandi*) &c. &c. *.

Juries are even so uncontrollable in their verdict,—so apprehensive has the constitution been, lest precautions to restrain them in the exercise of their function, however specious in the beginning, might in the issue be converted to the very destruction of the ends of that institution, that it is a repeated principle, that a juror, in delivering his opinion, is to have no other rule but his opinion itself; that is to say, no other rule than the belief which results to his mind from the facts alledged on both sides, from their probability, from the credibility of the witnesses, and even from all such circumstances as he may have a private knowledge of. Lord Chief Justice Hale expresses himself on this subject, in the following

* The principle that a Jury is to decide both on the fact, and the *criminality* of it, is so well understood, that if a verdict were so framed as only to have for its object the bare existence of the fact laid to the charge of the prisoner, no punishment could be awarded by the Judge in consequence of it. Thus, in the prosecution of Woodfall, for printing Junius's letter to the King, the Jury brought in the following verdict, *guilty of printing and publishing, only*; the consequence of which was the discharge of the prisoner.

terms,

terms, in his History of the Common Law of England. Chap. 12. §. 11.

“ In this recess of the jury, they are to consider their evidence ; to weigh the credibility of the witnesses, and the force and efficacy of their testimonies ; wherein (as I before said) they are not precisely bound to the rules of the civil law, viz. to have two witnesses to prove every fact, unless it be in cases of treason, nor to reject one witness because he is single, or always to believe two witnesses if the probability of the fact does upon other circumstances reasonably encounter them ; for the trial is not here simply by witnesses, but *by jury* : nay, it may so fall out, that a jury upon their own knowledge may know a thing to be false that a witness swore to be true, or may know a witness to be incompetent or incredible, though nothing be objected against him.—and may give their verdict accordingly *.”

If the verdict pronounces, *not guilty*, the prisoner is set at liberty, and cannot, on any pretence, be tried again

* The same principles and forms are observed in civil matters ; only peremptory challenges are not allowed.

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for the same offence. If the verdict declares him *guilty*, then, and not till then, the judge enters upon his function as a judge, and pronounces the punishment which the law appoints*. But, even in this case, he is not to judge according to his own discretion only; he must strictly adhere to the letter of the law; no constructive extension can be admitted; and however criminal a fact might in itself be, it would pass unpunished if it were found not to be positively comprehended in some one of the cases provided for by the law. The evils that may arise from the impunity of a crime, that is, an evil which a new law may instantly stop, has not by the

* When the party accused is one of the Lords temporal, he likewise enjoys the universal privilege of being judged by his Peers; though the Trial then differs in several respects. In the first place, as to the number of the Jurors: all the Peers are to perform the function of such, and and they must be summoned at least twenty days before-hand. II. When the Trial takes place during the session, it is said to be in the *High Court of Parliament*; and the Peers officiate at once as Jurors and Judges: when the Parliament is not sitting, the Trial is said to be in the Court of the *High Steward of England*; an office which is not usually in being, but is revived on those occasions; and the High Steward performs the office of Judge. III. In either of these cases, unanimity is not required; and the majority, which must consist of twelve persons at least, is to decide.

English

English laws been considered as of magnitude sufficient to be put in comparison with the danger of breaking through a barrier on which so mightily depends the safety of the individual *.

To all these precautions taken by the law for the safety of the subject, one circumstance must be added, which indeed would alone justify the partiality of the English lawyers to their laws in preference to the civil law; I mean the absolute rejection they have made of the torture †. Without repeating here what has been said on this subject by the admirable author of the treatise on *crimes and punishments*, I shall only observe, that the tor-

* I shall give here an instance of the scruple with which the English judges proceed upon occasions of this kind. Sir *Henry Ferrers* having been arrested by virtue of a warrant, in which he was termed a *knight*, though he was a baronet, *Nightingale* his servant took his part, and killed the officer; but it was decided, that as the warrant “was an ill warrant, the killing an officer in executing that warrant, cannot be murder, because no good warrant: wherefore he was found not guilty of the murder and manslaughter.”—See *Croke’s Rep. P. III. p. 371.*

† Coke says (*Inst. III. p. 35.*) that when *John Holland*, Duke of *Exeter*, and *William de la Poole*, Duke of *Suffolk*, renewed, under *Henry VI.* the attempts made to introduce the civil law, they exhibited the torture as a *beginning thereof*. The instrument was called the Duke of *Exeter’s daughter*.

Part II.

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ture, in itself so horrible an expedient, would, more especially in a free state, be attended with the most fatal consequences. It was absolutely necessary to preclude, by rejecting it, all attempts to make the pursuit of guilt an instrument of vengeance against the innocent. Even the convicted criminal must be spared, and a practice at all rates exploded, which might so easily be made an instrument of endless vexation and persecution *.

For the further prevention of abuses, it is an invariable usage, that the trial be public. The prisoner neither makes his appearance, nor pleads, but in places where every body may have free entrance; and the witnesses when they give their evidence, the judge when he delivers his opinion, the jury when they give their

* Judge Foster relates, from Whitlock, that the Bishop of London having said to Felton, who had assassinated the Duke of Buckingham, "if you will not confess, you *must go to the rack*"; the man replied, "if it must be so, I know not whom I may accuse in the extremity of the torture; Bishop Laud perhaps, or any lord at this board."

"Sound sense, (adds Foster) in the mouth of an enthusiast and a ruffian!"

Laud having proposed the rack, the matter was shortly debated at the board, and it ended in a reference to the judges, who unanimously resolved, that the rack could not be legally used.

verdict,

verdict, are all under the public eye. Lastly, the judge cannot change either the place or the kind of punishment prescribed by legal sentence; and a sheriff who should take away the life of a man in a manner different from that which the law prescribes, would be prosecuted as guilty of murder*.

In a word, the constitution of England being a free constitution, demanded from that circumstance alone, (as I should already have but too often repeated, if so fundamental a truth could be too often urged) extraordinary precautions to guard against the dangers which unavoidably attend the power of inflicting punishments; and it is particularly when considered in this light, that the trial by jury proves an admirable institution.

By means of it, the judicial authority is not only placed out of the hands of the man who is vested with the executive authority:—it is even out of the hands of the judge himself. Not only, he who is trusted with the public power cannot exert it, till he has as it were re-

* And if any other person but the sheriff, even the judge himself, were to cause death to be inflicted upon a man though convicted, it would be deemed an homicide.—See Blackstone, L. iv. ch. 14.

ceived the permission to that purpose, of those who are set apart to administer the laws; but these are also restrained in a manner exactly alike, and cannot make the law speak, but when, in their turn, they have likewise received permission.

And those persons to whom the law has delegated exclusively the prerogative of deciding that a punishment is to be inflicted,—those men without whose declaration the executive and the judicial powers are both thus bound down to inaction, do not form among themselves a permanent body, who may have had time to study how their power can serve to promote their private views; they are men selected at once from among the people, who perhaps never were before called to the exercise of such a function, nor foresee that they ever shall be called to it again.

As the extensive right of challenging effectually baffles, on the one hand, the secret practices of such as in the face of so many discouragements might still persist in making the judicial power subservient to their own views, and on the other excludes all personal resentments, the sole affection which remains to influence the
 integrity

integrity of those who alone are intitled to put the public power into action, during the short period of their authority, is, that their own fate as subjects, is, is essentially connected with that of the man whose doom they are going to decide.

In fine, such is the happy nature of this institution, that the judicial power, a power so formidable in itself, which is to dispose without finding any resistance, of the property, honour, and life of individuals, and which, whatever precautions may be taken to restrain it, must in a great degree remain arbitrary, may be said in England, to exist,—to accomplish every intended end,—and to be in the hands of nobody*.

In all these observations on the advantages of the English criminal laws, I have only considered it as connected with the constitution, which is a free one; and it is in this view alone that I have compared it with the jurisprudence received in other states. Yet, abstractedly

* The consequence of this institution is, that no man in England ever meets the man of whom he may say, “that man has a power to “decide on my death or life.” If we could for a moment forget the blessings of that institution, we ought at least to admire the ingenuity of it.

from the weighty constitutional considerations which I have suggested, I think there are still other interesting grounds of pre-eminence on the side of the laws of England.

They do not permit, that a man should be made to run the risk of a trial, but upon the declaration of twelve persons at least, (the Grand Jury). Whether he be in prison, or on his trial, they never for an instant refuse free access to those who have either advice, or comfort, to give him: they even allow him to summon all who may have any thing to say in his favour. Lastly, what is of very great importance, the witnesses against him must deliver their testimony in his presence; he may cross-examine them; and by one unexpected question, confound a whole system of calumny: indulgences these all, denied by the laws of other countries.

Hence, though an accused person may indeed be exposed to have his fate decided by persons (the Petty Jury) who possess not, perhaps, all that sagacity which in some delicate cases it is particularly advantageous to meet with in a judge, yet this inconvenience is amply compensated by the extensive means of defence with which the law,

as we have seen, has provided him. If a Juryman does not possess that expertness which is the result of long practice, yet neither does he bring to judgment that hardness of heart which is, more or less, also, a consequence of it; and bearing about him the principles, let me say, the unimpaired instinct of humanity, he trembles while he exercises the awful office to which he finds himself called; and in doubtful cases always decides for mercy.

It is to be further observed, that in the usual course of things, the Juries pay great regard to the opinions delivered by the judges: that in those cases where they are clear as to the fact, yet find themselves perplexed with regard to the degree of guilt connected with it, they leave it, as has been said before, to be ascertained by the discretion of the judge, by returning what is called a *special verdict*: that whenever circumstances seem to alleviate the guilt of a person against whom nevertheless the proof has been positive, they temper their verdict by recommending him to the mercy of the king; which seldom fails to produce at least a mitigation of the punishment: that, though a man, once acquitted, can never, under any pretence whatsoever, be again brought into

into peril for the same offence, yet a new trial would be granted, if he had been found guilty upon proofs strongly suspected of being false (Blackst. l. iv. c. 27.) Lastly, what distinguishes the laws of England from those of other countries in a very honourable manner, is, that as the torture is unknown to them, so neither do they know any more grievous punishment than the simple deprivation of life.

All these circumstances have combined to introduce such a mildness into the exercise of criminal justice, that the trial by jury is that point of their liberty to which the people of England are most thoroughly and universally wedded; and the only complaint I have ever heard uttered against it, has been by men, who, more sensible of the necessity of public order, than alive to the feelings of humanity, think that too many offenders escape with impunity.

Laws

Laws relative to Imprisonment.

BUT what compleats the sense of independance, which the laws of England procure to every individual, (a sense which is the noblest advantage attendant on liberty) is the greatness of their precautions upon the delicate point of imprisonment.

In the first place, by allowing, in most cases, of enlargement upon bail, and by prescribing, on that article, express rules for the judges to follow, they have removed all pretexts which circumstances might afford of depriving a man of his liberty.

But it is against the executive power that the legislature has, above all, directed its efforts: nor has it been but by slow degrees, that it has been enabled to wrest from it a branch of power which enabled it to deprive the people of their leaders, as well as to intimidate those who might be tempted to assume the function; and which, having thus all the efficacy of more odious means without the dangers of them, was the most formidable weapon for attacking public liberty.

The methods originally pointed out by the laws of England for the enlargement of a person unjustly imprisoned, were the writs of *mainprise*, *de odio et atia*, and *de homine replegiando*. Those writs, which could not be refused, were an order to the sheriff of the county in which a person had been confined, to inquire into the causes of his confinement; and, according to the circumstances of his case, either to discharge him purely and simply, or upon bail.

But the most usual method, and which even, by being most general and certain, has tacitly abolished all the others, is the writ of *habeas corpus*, so called because it begins with the words *habeas corpus ad subjiciendum*. This writ, being a writ of high prerogative, must issue from the court of King's-Bench: its effects extended equally over every county; and the king by it required, or was understood to require, the person who held one of his subjects in custody, to carry him before the judge, with the date of the confinement, and the cause of it, in order to discharge him, or continue to detain him, according as the judge shall decree.

But

But this writ, which might be a resource in cases of violent imprisonment effected by individuals, or granted at their request, was a weak one indeed, or rather was no resource at all, against the prerogative of the prince; especially under the reigns of the Tudors, and in the beginning of those of the Stuarts. And even, in the first years of Charles the first, the judges of the king's bench, who in consequence of the spirit of the times, and of their holding their places *durante bene placito*, were constantly devoted to the court, declared, "that they could not, upon an *habeas corpus*, either bail or deliver a prisoner, though committed without any cause assigned, in case he was committed by the special command of the king, or by the lords of the privy council."

Those principles, and the mode of procedure which resulted from them, attracted the attention of parliament; and in the act called the petition of right, passed in the third year of the reign of Charles the first, it was enacted, that no person should be held in custody, in consequence of such imprisonments.

But the judges knew how to evade the intention of this act : they indeed did not refuse to discharge a man imprisoned without a cause ; but they used so much delay in the examination of those causes, that they obtained the full effect of an open denial of justice.

The legislature again interposed, and in the act passed in the sixteenth year of the reign of Charles the first, the same in which the star-chamber was suppressed, it was enacted, that “ if any person be committed by the king himself in person, or by his privy council, or by any of members thereof, he shall have granted unto him, without any delay upon any pretence whatsoever, a writ of *habeas corpus* ; and that the judge shall thereupon, within three court days after the return is made, examine and determine the legality of such imprisonment.”

This act seemed to preclude every possibility of future evasion : yet it was evaded still ; and by the connivance of the judges, the person who detained the prisoner could, without danger, wait for a second, and a third writ,

writ, called an *alias* and a *pluries*, before he produced him.

All these different artifices gave at length birth to the famous act of *habeas corpus*, passed in the thirtieth year of the reign of Charles the second, which in England is considered as a second great charter, and has definitively suppressed all the resources of oppression *.

The principal articles of this act are, to fix the different terms allowed for bringing a prisoner: those terms are proportioned to the distance; and none can in any case exceed twenty days.

2. That, the officer and keeper neglecting to make due returns, or not delivering to the prisoner, or his agent, within six hours after demand, a copy of the warrant of commitment, or shifting the custody of the prisoner from one to another, without sufficient reason or authority, (specified in the act) shall for the first offence forfeit one hundred pounds, and for the second,

* The real title of the act is, *an act for better securing the subjects, and for prevention of imprisonments beyond the seas.*

two hundred, to the party grieved, and be disabled to hold his office.

3. No person, once delivered by *habeas corpus*, shall be recommitted for the same offence, on penalty of five hundred pounds.

4. Every person committed for treason or felony shall, if he require it in the first week of the next term, or the first day of the next session, be indicted in that term or session, or else admitted to bail ; unless the king's witnesses cannot be produced at that time : and if acquitted, or if not indicted and tried in the second term or session, he shall be discharged of his imprisonment for such imputed offence.

5. Any of the twelve judges, or the lord chancellor, who shall deny a writ of *habeas corpus*, on sight of the warrant, or on oath that the same is refused, shall forfeit severally to the party grieved five hundred pounds.

6. No inhabitant of England (except persons contracting, or convicts praying to be transported) shall be sent prisoner to Scotland, Ireland, Jersey, Guernsey, or any place beyond the seas, within or without the king's dominions ;

dominions; on pain that the party committing, his advisers, aiders, and assistants, shall forfeit to the party grieved a sum not less than five hundred pounds, to be recovered with treble costs; shall be disabled to bear any office of trust or profit; shall incur the penalties of of *præmunire* (the imprisonment for life, and forfeiture of all goods, and rents of lands during life); and shall be incapable of the king's pardon.

F I N I S.

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